

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, )  
 ) CR-18-00258-EJD  
 PLAINTIFF, )  
 ) SAN JOSE, CALIFORNIA  
 VS. )  
 ) JUNE 9, 2022  
 RAMESH "SUNNY" BALWANI, )  
 ) VOLUME 36  
 DEFENDANT. )  
 ) PAGES 6669 - 6893

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TRANSCRIPT OF TRIAL PROCEEDINGS  
BEFORE THE HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

A P P E A R A N C E S: (CONT'D)

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BY: MARIO C. SCUSSEL

UNITED STATES FOOD & DRUG  
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BY: GEORGE SCAVDIS

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SAN JOSE, CALIFORNIA

JUNE 9, 2022

P R O C E E D I N G S

(COURT CONVENED AT 9:02 A.M.)

(JURY OUT AT 9:02 A.M.)

THE COURT: LET'S GO ON THE RECORD IN THE BALWANI  
MATTER.

COUNSEL, WHY DON'T I HAVE YOU STATE YOUR APPEARANCE,  
PLEASE.

MR. BOSTIC: GOOD MORNING, YOUR HONOR.

JOHN BOSTIC FOR THE UNITED STATES, ALONG WITH  
ROBERT LEACH, JEFF SCHENK, AND KELLY VOLKAR.

THE COURT: THANK YOU. GOOD MORNING.

MR. COOPERSMITH: GOOD MORNING, YOUR HONOR.

JEFF COOPERSMITH FOR MR. BALWANI WHO IS PRESENT, AND I'M  
JOINED BY MY COLLEAGUES AMY WALSH AND STEPHEN CAZARES, AND  
OTHER MEMBERS OF MY TEAM, MOLLY MCCAFFERTY AND AARON BRECHER.

THE COURT: THANK YOU. GOOD MORNING EVERYONE.

WE ARE OUTSIDE OF THE PRESENCE OF THE JURY AND I  
UNDERSTAND THERE WERE SOME MATTERS THAT COUNSEL WISH TO  
DISCUSS.

MR. COOPERSMITH: YES, YOUR HONOR.

THE FIRST ONE IS SORT OF A CLARIFICATION OR HOUSEKEEPING  
MATTER JUST FROM THE COURT'S ORDER THE OTHER DAY. DOCKET 1475  
WAS THE COURT'S ORDER ON ADMITTING VARIOUS EXHIBITS, AND WE  
JUST WANTED TO CLARIFY A FEW THINGS.

09:03AM 1 SO, FIRST OF ALL, WITH REGARD TO EXHIBIT 20817, WHICH WAS  
09:03AM 2 LISTED AS EXHIBIT 6 IN THE COURT'S ORDER 1475, THE COURT  
09:03AM 3 ORDERED THAT -- AND I'LL USE BOTH THE ECF PAGES AND THE EXHIBIT  
09:03AM 4 PAGES -- THE ECF PAGES 94 THROUGH 97, WHICH ARE EXHIBIT PAGES 1  
09:03AM 5 THROUGH 4, THE COURT ORDERED WERE ADMISSIBLE. THAT'S CLEAR.

09:03AM 6 ECF PAGES 98 THROUGH 118, WHICH ARE EXHIBIT PAGES 5  
09:03AM 7 THROUGH 25, THE COURT ORDERED WERE INADMISSIBLE. THAT'S CLEAR.

09:04AM 8 BUT THEN THERE'S NO MENTION IN THE COURT'S RULING OF  
09:04AM 9 ECF PAGES 119 THROUGH 147, WHICH ARE EXHIBIT PAGES 26 THROUGH  
09:04AM 10 54. WE JUST WANTED TO MAKE SURE, ONE WAY OR THE OTHER, WHETHER  
09:04AM 11 THOSE PAGES ARE ADMISSIBLE OR NOT BEFORE WE OFFER EXHIBITS. SO  
09:04AM 12 WE DON'T WANT TO HAVE ANY MISTAKE THERE.

09:04AM 13 JUST SO THE COURT HAS IN MIND, THOSE EXHIBIT -- THOSE  
09:04AM 14 PAGES ARE AN FDA DECISION SUMMARY, AND THEY'RE -- YOU KNOW,  
09:04AM 15 IT'S -- IT'S A NUMBER OF PAGES, 20-SOMETHING PAGES.

09:04AM 16 BUT IT'S THE FDA DECISION SUMMARY, WHICH IS, LIKE, THE  
09:04AM 17 SECOND THING THAT YOU CAN CLICK ON ON THE FDA WEBSITE.

09:04AM 18 SO WE JUST WEREN'T SURE ONE WAY OR THE OTHER. OBVIOUSLY  
09:04AM 19 WE WOULD PREFER IT BE ADMISSIBLE. BUT EITHER WAY, WE JUST WANT  
09:04AM 20 TO KNOW SO WE DON'T OFFER -- WE DON'T JUST WANT TO OFFER  
09:05AM 21 EXHIBITS THAT THE COURT DID NOT INTEND FOR US TO ADMIT. SO  
09:05AM 22 THAT'S THE FIRST ISSUE.

09:05AM 23 AND THEN THE SECOND ISSUE, AGAIN, THE CLARIFICATION POINT,  
09:05AM 24 IS EXHIBIT 20830, WHICH WAS EXHIBIT 7 IN OUR MOTION, AND THAT'S  
09:05AM 25 HOW THE COURT REFERRED TO IT IN DOCKET 1475 IN THE COURT'S

09:05AM 1 ORDER, THE COURT RULED THAT ECF PAGES 162 THROUGH 164 ARE  
09:05AM 2 ADMISSIBLE, SO THAT'S CLEAR. THOSE ARE EXHIBIT PAGES 1 THROUGH  
09:05AM 3 3.

09:05AM 4 THE COURT ORDERED THAT ECF PAGE 165, WHICH IS EXHIBIT  
09:05AM 5 PAGE 4, IS ADMISSIBLE, AND SO THAT'S CLEAR.

09:05AM 6 AND THEN THERE'S -- THE COURT MAY REMEMBER IN THAT  
09:05AM 7 EXHIBIT -- THIS IS THE PATENT APPLICATION. THERE'S A NUMBER OF  
09:05AM 8 PAGES THAT, IN PARAGRAPH TO PARAGRAPH, DESCRIBE THE INVENTION.

09:06AM 9 AND THE COURT ORDERED THAT PAGES 166 -- I'M SORRY, 166  
09:06AM 10 THROUGH 169, THESE ARE THE ECF PAGES, WERE ADMISSIBLE, AND THAT  
09:06AM 11 PAGES 200 THROUGH 204 ARE INADMISSIBLE.

09:06AM 12 WHEN WE LOOKED AT THE EXHIBIT, IT LOOKED LIKE THOSE PAGES  
09:06AM 13 THAT THE COURT ORDERED ADMISSIBLE WERE SORT OF A FEW PAGES OF  
09:06AM 14 THE BODY OF THE PATENT APPLICATION, AND THEN THE REST WAS NOT  
09:06AM 15 ADMISSIBLE, BUT IT DIDN'T NECESSARILY MAKE SENSE TO US WHY THAT  
09:06AM 16 ONE WOULD BE ADMISSIBLE AND NOT THE OTHER.

09:06AM 17 SO IT MIGHT BE THAT THE COURT INTENDED FOR THE ENTIRE  
09:06AM 18 SECTION TO BE INADMISSIBLE, BUT AGAIN, WE WANTED TO MAKE SURE  
09:06AM 19 THAT WE DID NOT OFFER EXHIBITS THAT THE COURT DID NOT INTEND  
09:06AM 20 FOR US TO BE ABLE TO ADMIT.

09:06AM 21 THE COURT: OKAY.

09:06AM 22 MR. COOPERSMITH: SO THAT'S THIS MATTER, AND I  
09:06AM 23 UNDERSTAND THE COURT WOULD HAVE TO LOOK AT THOSE PAGES AND SORT  
09:07AM 24 IT OUT. BUT I JUST WANTED TO BRING IT TO THE COURT'S  
09:07AM 25 ATTENTION.

09:07AM 1 THE COURT: ALL RIGHT. THANK YOU.

09:07AM 2 MR. BOSTIC.

09:07AM 3 MR. BOSTIC: LET ME JUST CHECK WITH MR. LEACH, WHO  
09:07AM 4 ARGUED THAT, TO SEE IF HE HAS ANYTHING TO ADD, YOUR HONOR.

09:07AM 5 THE COURT: THANK YOU.

09:07AM 6 IS THIS, MR. COOPERSMITH, IS THIS SOMETHING THAT YOU NEED  
09:07AM 7 RESPONSE TO PRIOR TO CALLING ANY NEXT WITNESS?

09:07AM 8 MR. COOPERSMITH: WELL, AND THAT'S THE NEXT MATTER  
09:07AM 9 ABOUT THAT NEXT WITNESS.

09:07AM 10 THE COURT: OKAY.

09:07AM 11 MR. COOPERSMITH: BUT WE, WE WOULD NEED CLARITY ON  
09:07AM 12 THAT BEFORE THOSE EXHIBITS ARE OFFERED INTO EVIDENCE BECAUSE  
09:07AM 13 THE COURT WOULD HAVE TO AGREE SOME PAGES OR THE OTHER PAGES ARE  
09:07AM 14 ADMISSIBLE, AND WE JUST WANT TO MAKE SURE THAT WE GET IT RIGHT.

09:07AM 15 THE COURT: RIGHT. BUT DO YOU NEED THAT INFORMATION  
09:07AM 16 OR THAT CLARIFICATION FROM THE COURT PRIOR TO YOUR CALLING YOUR  
09:07AM 17 NEXT WITNESS?

09:07AM 18 MR. COOPERSMITH: NOT NECESSARILY, YOUR HONOR. AND  
09:07AM 19 HERE'S WHY -- AND I INFORMED MR. LEACH AND MR. BOSTIC OF THIS  
09:07AM 20 THIS MORNING.

09:07AM 21 THE EXHIBITS THAT ARE THE SUBJECT OF 1475, THERE ARE NINE  
09:08AM 22 EXHIBITS. ONE OF THEM, WHICH IS EXHIBIT 7098, WE'RE NOT GOING  
09:08AM 23 TO OFFER. SO THERE ARE EIGHT EXHIBITS.

09:08AM 24 AND THEN THERE ARE ADDITIONAL EXHIBITS THAT ARE ADMISSIBLE  
09:08AM 25 BY STIPULATION.

09:08AM 1 OUR INTENT WHEN WE FILED THE MOTION AND ARGUED THAT MOTION  
09:08AM 2 WAS TO CALL MR. OKANO, WHO OBVIOUSLY KNOWS NOTHING ABOUT THESE  
09:08AM 3 EXHIBITS, AND BY CALLING MR. OKANO, IT WOULD GIVE US AN  
09:08AM 4 OPPORTUNITY TO DISPLAY THESE EXHIBITS TO THE JURY, AND THE  
09:08AM 5 QUESTIONS WOULD BE, DO YOU SEE THIS? DO YOU SEE THAT? THAT  
09:08AM 6 SORT OF QUESTIONING. WE THINK IT WOULD BE MORE EFFICIENT.

09:08AM 7 AND ALSO WE WOULD PREFER, AS PART OF OUR DEFENSE CASE, TO  
09:08AM 8 SIMPLY HAVE THE COURT ADMIT THOSE EXHIBITS AND NOT CALL A  
09:08AM 9 PARALEGAL WHO IS NOT NECESSARY FOR ADMISSIBILITY AND DOESN'T  
09:08AM 10 ADD ANYTHING TO THE EQUATION.

09:08AM 11 AND WHAT WE WOULD BE FOREGOING, OBVIOUSLY, WOULD BE THE  
09:08AM 12 ABILITY TO DISPLAY TO THE JURY RIGHT NOW THOSE DOCUMENTS. BUT  
09:09AM 13 OBVIOUSLY ONCE THEY'RE IN EVIDENCE, EITHER SIDE COULD USE THOSE  
09:09AM 14 EXHIBITS HOW THEY SEE FIT FOR CLOSING.

09:09AM 15 SO THAT'S WHAT WE WOULD LIKE TO DO TODAY. SO WE WOULD NOT  
09:09AM 16 CALL MR. OKANO. FOR THAT REASON, IT WOULDN'T BE NECESSARY FOR  
09:09AM 17 THE COURT TO SORT OUT THAT PAGE ISSUES IF WE ADMITTED THE  
09:09AM 18 EXHIBITS THAT WAY BECAUSE THE COURT COULD JUST LOOK AT THOSE  
09:09AM 19 AND THEN ADMIT THOSE EXHIBITS AT THE TIME WHEN WE'RE READY TO  
09:09AM 20 DO THAT.

09:09AM 21 THE COURT: I SEE. OKAY. THANK YOU.

09:09AM 22 MR. LEACH.

09:09AM 23 MR. LEACH: YOUR HONOR, WE DID HAVE QUESTIONS FOR  
09:09AM 24 MR. OKANO, SO I'M NOT PREPARED RIGHT NOW TO SIMPLY STIPULATE TO  
09:09AM 25 THEIR ADMISSION. WE THINK IT'S APPROPRIATE -- WE ALSO HAD SOME

09:09AM 1 ADDITIONAL EXHIBITS THAT WE THINK SHOULD BE OFFERED AND  
09:09AM 2 ADMITTED DURING CROSS-EXAMINATION.

09:09AM 3 SO I DO THINK THE ISSUE IS RIPE.

09:09AM 4 I WOULD SAY -- I DON'T KNOW IF MR. COOPERSMITH INTENDED TO  
09:09AM 5 DISPLAY THE PAGES THAT THERE'S SOME AMBIGUITY ABOUT. MY  
09:09AM 6 EXPECTATION IS NOT. AND IF THEY'RE NOT GOING TO BE DISPLAYED  
09:09AM 7 WITH THE PARALEGAL, I'M SURE THIS IS SOMETHING THAT CAN BE  
09:10AM 8 RESOLVED IN DUE COURSE.

09:10AM 9 BUT IF MR. -- IF THE COURT WANTS TO GO ANOTHER WAY AND  
09:10AM 10 MR. OKANO IS THE FIRST WITNESS, WE DO HAVE QUESTIONS FOR HIM.

09:10AM 11 THE COURT: SURE. OKAY.

09:10AM 12 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:10AM 13 SO THIS IS OUR CASE, AND WE WOULD LIKE TO PROCEED THIS  
09:10AM 14 WAY. OBVIOUSLY ALL OF THE TIME -- AND, YOU KNOW, YOUR HONOR  
09:10AM 15 HAS BEEN ON THE BENCH A LONG TIME -- EXHIBITS ARE ADMITTED WHEN  
09:10AM 16 THERE'S NOT A WITNESS IF THEY'RE ADMISSIBLE.

09:10AM 17 SO WE HAVE A COMBINATION OF EXHIBITS THAT ARE ADMISSIBLE  
09:10AM 18 BASED ON THE COURT'S ORDER, AND THEN OTHER EXHIBITS ARE  
09:10AM 19 ADMISSIBLE BASED ON STIPULATION OF THE PARTIES.

09:10AM 20 WE THINK THEY SHOULD BE ADMITTED.

09:10AM 21 THE GOVERNMENT DOESN'T HAVE ANY RIGHT TO CROSS-EXAMINE.  
09:10AM 22 FRANKLY, THERE WERE WITNESSES THAT I THOUGHT THE GOVERNMENT WAS  
09:10AM 23 GOING TO CALL THAT I PREPARED FOR AND I THOUGHT I HAD SOME  
09:10AM 24 GREAT CROSS-EXAMINATION, BUT THEY NEVER CALLED THE WITNESSES SO  
09:10AM 25 I NEVER GOT TO DO IT, AND THAT'S JUST HOW TRIAL GOES.

09:10AM 1 SO WE DON'T THINK THAT MR. LEACH HAS ANY RIGHT TO HAVE US  
09:10AM 2 CALL A WITNESS WHEN THE DOCUMENTS ARE OTHERWISE ADMISSIBLE.

09:11AM 3 IF HE HAS ANOTHER WAY TO GET HIS DOCUMENTS IN, IF IT'S AN  
09:11AM 4 APPROPRIATE REBUTTAL CASE, I DON'T KNOW THAT IT IS, BUT  
09:11AM 5 CERTAINLY THAT'S SOMETHING THAT THE GOVERNMENT COULD ASSERT.

09:11AM 6 BUT WE DON'T THINK THAT THERE'S ANY ABILITY FOR THE  
09:11AM 7 GOVERNMENT TO INTERFERE WITH OUR DEFENSE CASE. OUR STRATEGY  
09:11AM 8 THAT WE HAVE COME TO THIS MORNING IS THAT WE WOULD LIKE TO GET  
09:11AM 9 THESE EXHIBITS ADMITTED.

09:11AM 10 MR. OKANO ADDS NOTHING TO THE EQUATION. HE DOESN'T  
09:11AM 11 HELP -- HE'S NOT NECESSARY TO ESTABLISH ANYTHING. THIS HAS  
09:11AM 12 ALREADY BEEN ESTABLISHED BY COURT ORDER AND STIPULATION, AND SO  
09:11AM 13 THAT'S HOW WE WOULD LIKE TO PROCEED.

09:11AM 14 THE COURT: OKAY.

09:11AM 15 MR. LEACH.

09:11AM 16 MR. LEACH: WE WOULD LIKE TO ASK HIM QUESTIONS,  
09:11AM 17 YOUR HONOR, CONSISTENT WITH WHAT WE'VE BEEN DOING THROUGHOUT  
09:11AM 18 THIS TRIAL.

09:11AM 19 THE COURT: THANK YOU.

09:11AM 20 SO LET ME ASK YOU, IT SOUNDS LIKE WHAT I HEAR YOU SAYING,  
09:11AM 21 MR. COOPERSMITH, IS THAT YOU BELIEVE THE COURT CAN JUST ADMIT  
09:11AM 22 THESE EXHIBITS BASED ON STIPULATION, SOME OF THEM BASED ON  
09:11AM 23 STIPULATION, AND OTHERS BASED ON --

09:11AM 24 MR. COOPERSMITH: -- THE COURT ORDER. SO WE WENT  
09:12AM 25 THROUGH THIS --

09:12AM 1 THE COURT: 1475.

09:12AM 2 MR. COOPERSMITH: YES, YOUR HONOR, 1475.

09:12AM 3 THE COURT: OKAY.

09:12AM 4 MR. COOPERSMITH: AND WE WENT THROUGH ALL OF THOSE  
09:12AM 5 DOCUMENTS, THE GOVERNMENT HAD A CHANCE TO ARGUE THAT, AND THEY  
09:12AM 6 WERE ADMISSIBLE BECAUSE THEY WERE AUTHENTIC OR THEY WERE PUBLIC  
09:12AM 7 RECORDS, AND THERE WAS NO DEBATE ABOUT THAT. THERE WERE SOME  
09:12AM 8 401 AND 403 ISSUES THAT THE COURT RESOLVED.

09:12AM 9 BUT AT THIS POINT, MR. OKANO, HE DOESN'T KNOW ANYTHING  
09:12AM 10 OTHER THAN THEY'RE ADMISSIBLE BASED ON THE COURT'S ORDER, AND  
09:12AM 11 ALL THAT MR. OKANO COULD ADD IS HE WOULD BE A WAY FOR US TO  
09:12AM 12 DISPLAY THE EXHIBITS RIGHT NOW BECAUSE WE WOULD JUST PUT THE  
09:12AM 13 EXHIBIT UP AND SAY, MR. OKANO, WE KNOW YOU DON'T KNOW ANYTHING  
09:12AM 14 ABOUT THIS, BUT DO YOU SEE THIS PAGE AND DO YOU SEE THIS DATE?

09:12AM 15 AND THAT'S JUST OUR CHOICE IF WE WANT TO DISPLAY THINGS.

09:12AM 16 BUT IF WE DON'T WANT TO DISPLAY THINGS TO THE JURY RIGHT  
09:12AM 17 NOW, THEN WE DON'T NEED HIM.

09:12AM 18 AND I THINK THAT'S HOW WE WANT TO PROCEED IN OUR DEFENSE  
09:12AM 19 CASE.

09:12AM 20 THE COURT: SO PREVIOUSLY YOU TOLD ME THAT YOUR  
09:12AM 21 INTENT WAS TO CALL A PARALEGAL. I THINK IT'S IN YOUR PLEADINGS  
09:13AM 22 AS WELL.

09:13AM 23 MR. COOPERSMITH: YES, YOUR HONOR.

09:13AM 24 THE COURT: YOU'RE GOING TO CALL THE PARALEGAL, AND  
09:13AM 25 THE PARALEGAL WILL TESTIFY AS TO WHATEVER FOUNDATIONAL NEEDS

09:13AM 1 ARE, AND YOU WOULD PUT HIM ON.

09:13AM 2 YOU WERE CONCERNED ABOUT -- I THINK YOU WERE CONCERNED  
09:13AM 3 ABOUT CROSS-EXAMINATION. ONE OF YOUR COLLEAGUES SUGGESTED  
09:13AM 4 THAT.

09:13AM 5 AND THAT IS -- I THINK MR. BOSTIC WAS AT THE LECTERN, AND  
09:13AM 6 THERE WAS SOME QUESTION ABOUT, WELL, A GOOD FAITH BASIS FOR  
09:13AM 7 CROSS-EXAMINATION OF THE PARALEGAL. I THINK THERE WAS A LITTLE  
09:13AM 8 CONVERSATION ABOUT THAT.

09:13AM 9 BUT WHAT I HEAR YOU SAYING NOW IS THAT YOU'RE NOT -- YOU  
09:13AM 10 DON'T INTEND TO CALL -- YOU'VE CHANGED YOUR MIND ABOUT THAT,  
09:13AM 11 YOU DON'T INTEND TO CALL HIM OR HER, AND YOU'D LIKE THE COURT  
09:13AM 12 TO JUST RULE ON THE ADMISSIBILITY OF THESE.

09:13AM 13 MR. COOPERSMITH: YES, YOUR HONOR. THE COURT HAS  
09:13AM 14 ALREADY RULED ON THE ADMISSIBILITY OF THE EXHIBITS IN  
09:13AM 15 DOCUMENT 1475.

09:13AM 16 AND YOUR HONOR IS CORRECT THAT WHEN WE FILED THE MOTION,  
09:13AM 17 OUR INTENTION WAS TO CALL THE WITNESS.

09:14AM 18 BUT, AGAIN, THE ONLY PURPOSE OF DOING THAT WOULD BE TO  
09:14AM 19 GIVE US THE ABILITY TO DISPLAY SOME DOCUMENTS TO THE JURY NOW  
09:14AM 20 RATHER THAN JUST IN CLOSING ARGUMENT, AND WE DON'T NEED TO DO  
09:14AM 21 THAT. I THINK IT'S JUST A MATTER OF THE EXHIBITS ARE  
09:14AM 22 ADMISSIBLE BY COURT ORDER, SOME BY STIPULATION, AND THAT'S HOW  
09:14AM 23 WE WANT TO PROCEED.

09:14AM 24 AGAIN, THE GOVERNMENT DOESN'T HAVE ANY RIGHT TO INSIST ON  
09:14AM 25 US CALLING A WITNESS IN OUR DEFENSE CASE IF THE DOCUMENTS ARE

09:14AM 1 OTHERWISE ADMISSIBLE.

09:14AM 2 THE COURT: OKAY.

09:14AM 3 MR. LEACH.

09:14AM 4 MR. LEACH: THEY SHOULD HAVE A SPONSORING WITNESS IF  
09:14AM 5 THEY WANT TO PUT A DOCUMENT INTO EVIDENCE, YOUR HONOR, OR A  
09:14AM 6 STIPULATION, WHICH THEY DON'T HAVE.

09:14AM 7 I, I AM CONCERNED THAT IF THESE DOCUMENTS JUST COME IN,  
09:14AM 8 THE JURY IS NOT GOING TO HAVE ANY CONTEXT FOR THEM, THE CLOSING  
09:14AM 9 ARGUMENTS MAY CROSS STREAMS, AND I THINK IF HE WANTS TO USE A  
09:14AM 10 DOCUMENT IN CLOSING ARGUMENT, WE SHOULD HAVE THE OPPORTUNITY IN  
09:14AM 11 THE MOMENT TO DRAW OUT THE PORTIONS OF THE DOCUMENT THAT WE  
09:14AM 12 THINK UNDERCUT WHATEVER PROBATIVE VALUE THEY THINK IT HAS.

09:15AM 13 SO I'M, I'M LEERY OF JUST DUMPING THESE ON THE JURY WITH  
09:15AM 14 NO CONTEXT AND NO ABILITY TO ASK A PERSON SOME QUESTIONS ABOUT  
09:15AM 15 THE FULL CONTEXT OF THE DOCUMENT.

09:15AM 16 IN ADDITION, THESE DOCUMENTS ARE BEING OFFERED IN LARGE  
09:15AM 17 MEASURE FOR THE STATE OF MIND OF MR. BALWANI. AND IF THESE  
09:15AM 18 DOCUMENTS ARE BEING OFFERED FOR THE STATE OF MIND OF  
09:15AM 19 MR. BALWANI, THERE ARE ADDITIONAL DOCUMENTS ON THAT SAME TOPIC,  
09:15AM 20 THAT IF THERE WERE AN FBI AGENT OR THE AUTHOR OF THE DOCUMENT,  
09:15AM 21 WE WOULD RIGHTFULLY, IN THAT CROSS-EXAMINATION, BE ABLE TO  
09:15AM 22 OFFER THOSE OTHER DOCUMENTS THAT ARE REFLECTIVE IN THE MOMENT  
09:15AM 23 OF THAT STATE OF MIND.

09:15AM 24 SO THE PROPOSED COURSE IS HAMSTRINGING PROPER  
09:15AM 25 CROSS-EXAMINATION I THINK ON SOME LEVEL. THE DOCUMENTS HAVE

09:15AM 1 BEEN ADMITTED, OR THE COURT HAS RULED THAT THEY'RE  
09:15AM 2 INADMISSIBLE, SO I DON'T THINK THAT THE CROSS-EXAMINATION IS  
09:15AM 3 GOING TO BE LONG.

09:15AM 4 BUT I JUST, I'M WARY OF THESE COMING IN WITHOUT CONTEXT,  
09:16AM 5 WITHOUT THE ABILITY TO SHOW IN THE MOMENT WHY THE GOVERNMENT  
09:16AM 6 THINKS THAT THEY ARE AS PROBATIVE AS THE DEFENSE MIGHT THINK,  
09:16AM 7 AND SO WE WOULD LIKE TO PROCEED THROUGH CROSS-EXAMINATION.

09:16AM 8 MR. COOPERSMITH: YOUR HONOR, IF I COULD JUST  
09:16AM 9 RESPOND TO THAT.

09:16AM 10 MR. OKANO, THE WITNESS, HE'S A PARALEGAL AT ORRICK. HE  
09:16AM 11 PROVIDES ZERO CONTEXT. HE DOESN'T KNOW ANYTHING ABOUT THESE  
09:16AM 12 DOCUMENTS. HE DOESN'T WORK ON THIS CASE. HE DIDN'T WORK AT  
09:16AM 13 THERANOS. ALL HE IS, IS POTENTIALLY A FOIL FOR US TO DISPLAY  
09:16AM 14 DOCUMENTS TO THE JURY.

09:16AM 15 AND THE GOVERNMENT DOESN'T HAVE A RIGHT TO PUT IN WHATEVER  
09:16AM 16 EVIDENCE THEY THINK THEY WANT TO PUT IN THROUGH OUR CASE. THEY  
09:16AM 17 CAN PUT IN DOCUMENTS IN THEIR OWN CASE. THEY CERTAINLY HAVE  
09:16AM 18 HAD MONTHS TO DO THAT. AND, AS APPROPRIATE, THEY CAN MAKE A  
09:16AM 19 REBUTTAL CASE.

09:16AM 20 BUT THEY DON'T HAVE A RIGHT TO PUT IN DOCUMENTS IN OUR  
09:16AM 21 CASE.

09:16AM 22 AND AGAIN, YOUR HONOR, THERE WERE WITNESSES THAT THE  
09:16AM 23 GOVERNMENT SAID THEY WOULD CALL AND ENDED UP NOT CALLING, AND I  
09:16AM 24 WOULD HAVE BEEN DELIGHTED IF THEY CALLED THE WITNESSES BECAUSE  
09:16AM 25 I THOUGHT I HAD REALLY GREAT DOCUMENTS I WANTED TO GET IN

09:17AM 1 THROUGH CROSS AND I DIDN'T GET TO DO THAT BECAUSE THEY DIDN'T  
09:17AM 2 CALL THE WITNESS.

09:17AM 3 THESE DOCUMENTS ARE ADMISSIBLE UNDER COURT ORDER AND  
09:17AM 4 STIPULATION. THERE'S NO DEBATE ABOUT THAT ANYMORE.

09:17AM 5 MR. OKANO ADDS NO CONTEXT AND NO FOUNDATION, NOTHING,  
09:17AM 6 BEYOND WHAT THE COURT HAS ALREADY ORDERED.

09:17AM 7 THE COURT: THANK YOU.

09:17AM 8 IF THE DOCUMENTS ARE ADMITTED WITHOUT THE WITNESS, IS IT  
09:17AM 9 YOUR INTENT TO DISPLAY THEM AND PUBLISH THEM THEN? DOES EITHER  
09:17AM 10 SIDE WISH THAT TO HAPPEN?

09:17AM 11 MR. COOPERSMITH: I HAVE NO NEED TO DISPLAY THEM TO  
09:17AM 12 THE JURY.

09:17AM 13 THE COURT: IF THE GOVERNMENT REQUESTS THAT THEY BE  
09:17AM 14 PUBLISHED, WOULD YOU OBJECT TO THAT?

09:17AM 15 MR. COOPERSMITH: NO, I WOULD NOT OBJECT TO THAT.

09:17AM 16 BUT IT'S NOT MY INTENTION TO DISPLAY DOCUMENTS WHEN  
09:17AM 17 THERE'S NO WITNESS ON THE STAND. IT WOULD JUST BE, LADIES AND  
09:17AM 18 GENTLEMEN OF THE JURY, YOU SHOULD KNOW THE FOLLOWING EXHIBIT  
09:17AM 19 NUMBERS ARE ADMITTED, AND WHATEVER PURPOSE THEY'RE ADMITTED  
09:17AM 20 FOR, AND THEN WE WOULD OBVIOUSLY HAVE TO RESPECT THE COURT'S  
09:17AM 21 ORDER AT ARGUMENT AS TO WHAT WE COULD ARGUE IF SOME ARE  
09:17AM 22 ADMITTED FOR NOTICE AND NOT THE TRUTH AND WE WOULD HAVE TO,  
09:17AM 23 BOTH SIDES, RESPECT THAT RULING.

09:17AM 24 THE COURT: WELL, IT SEEMS TO ME THAT IF I'M GOING  
09:18AM 25 TO ALLOW THESE DOCUMENTS TO COME IN, IT SEEMS TO ME IT WOULD BE

09:18AM 1 MORE HELPFUL FOR THE JURY TO SEE THEM IN REALTIME DURING THE  
09:18AM 2 TRIAL, AND IF YOU WERE GOING TO ASK THAT THESE ARE ADMITTED FOR  
09:18AM 3 A CERTAIN PURPOSE AND FOR THE JURY'S NOTE TAKING, FOR THEIR  
09:18AM 4 EDIFICATION AND INFORMATION, IT SEEMS TO ME THAT IT WOULD BE  
09:18AM 5 BETTER TO HAVE WHATEVER IT IS DISPLAYED AND THEN THE COURT  
09:18AM 6 INSTRUCT THEM AT THAT MOMENT WHAT THIS DOCUMENT IS ADMITTED FOR  
09:18AM 7 AND ANY LIMITATIONS TO IT FOR THEIR NOTE TAKING, JUST FOR THEIR  
09:18AM 8 INFORMATION.

09:18AM 9 I THINK THAT'S MORE FULSOME THAN GIVING THEM NUMBERS AND  
09:18AM 10 THEN HAVING THEM SORT IT OUT IN THE JURY ROOM WHEN THEY --  
09:18AM 11 MR. COOPERSMITH: THAT'S FINE, YOUR HONOR. IT WOULD  
09:18AM 12 ESSENTIALLY BE JUST A SLIDESHOW WHERE WE SHOW THE EXHIBIT ON  
09:18AM 13 THE SCREEN AND THE COURT WOULD SAY THIS IS ADMITTED FOR A  
09:18AM 14 CERTAIN PURPOSE, AND THEN WE WOULD MOVE ON TO THE NEXT ONE.

09:19AM 15 IT WOULD TAKE -- I HAVE NO OBJECTION TO THAT PROCEDURE IF  
09:19AM 16 THAT'S HOW THE COURT WANTS TO PROCEED.

09:19AM 17 THE COURT: SO BEFORE WE DO THIS, IT SOUNDS LIKE  
09:19AM 18 THERE'S GOING TO BE A DELAY IN OUR STARTING THIS MORNING,  
09:19AM 19 BECAUSE I'LL NEED TO LOOK AT THIS 1475 AND SORT OUT WHAT IT IS  
09:19AM 20 THAT YOU'RE SEEKING TO INTRODUCE.

09:19AM 21 MR. COOPERSMITH: YES, YOUR HONOR.

09:19AM 22 IT'S JUST -- IF WE JUST PROCEEDED BASED ON THE COURT  
09:19AM 23 ORDER, IT WOULDN'T PREJUDICE THE DEFENSE.

09:19AM 24 BUT MY CONCERN WAS THAT WE MIGHT BE ADMITTING DOCUMENTS  
09:19AM 25 THAT THE COURT DIDN'T REALLY INTEND FOR US TO BE ABLE TO ADMIT.

09:19AM 1 THE COURT: NO, I UNDERSTAND. I APPRECIATE THAT.

09:19AM 2 SO I'M GOING TO NEED TO STEP DOWN AND REVIEW THINGS HERE  
09:19AM 3 FOR A MOMENT, AND THEN COME BACK AND WE'LL TALK ABOUT THAT.

09:19AM 4 MR. LEACH.

09:19AM 5 MR. LEACH: I WOULD JUST SUGGEST, YOUR HONOR, WE  
09:19AM 6 START WITH MR. SONNIER, AND I THINK THE COURT MIGHT BE ABLE TO  
09:19AM 7 RESOLVE THIS DURING A BREAK.

09:19AM 8 MR. COOPERSMITH: THAT'S FINE, YOUR HONOR. WE CAN  
09:19AM 9 DO THIS -- IF THAT GIVES THE COURT THE TIME TO LOOK THROUGH  
09:20AM 10 THIS, THAT'S FINE. THEN WE CAN START WITH MR. SONNIER AND DO  
09:20AM 11 THAT.

09:20AM 12 THE COURT: YES.

09:20AM 13 MR. COOPERSMITH: YOUR HONOR, I DON'T KNOW IF THIS  
09:20AM 14 WOULD BE HELPFUL. I DID SAY THE DIFFERENT PAGE NUMBERS ON THE  
09:20AM 15 RECORD, BUT THERE'S A CHART I HAVE WHICH I HAD NOT, FRANKLY,  
09:20AM 16 INTENDED TO PROVIDE, BUT IT MIGHT BE HELPFUL FOR THE COURT TO  
09:20AM 17 TAKE A LOOK AT.

09:20AM 18 THE COURT: SURE. I'M HAPPY TO RECEIVE IT.

09:20AM 19 IF YOU WOULD GIVE A COPY TO MR. LEACH.

09:20AM 20 MR. COOPERSMITH: I'M JUST GOING TO GIVE MR. LEACH  
09:20AM 21 MY COPY. IT HAS SOME NOTES ON IT, BUT I DON'T THINK THEY'RE  
09:20AM 22 TOO BAD.

09:20AM 23 THE COURT: GREAT. OKAY.

09:20AM 24 THE CLERK: (HANDING.)

09:20AM 25 THE COURT: THANK YOU. WE'LL LOOK AT IT AT AN

09:20AM 1 APPROPRIATE BREAK.

09:20AM 2 SO AS I UNDERSTAND IT, IT'S NOT CRITICAL TO YOUR  
09:20AM 3 PRESENTATION THIS MORNING THAT THESE EXHIBITS BE ADMITTED  
09:20AM 4 BEFORE MR. SONNIER TESTIFY, AND THEY COULD BE ADMITTED AT SOME  
09:20AM 5 OTHER TIME, AND THAT WOULD NOT IN ANY WAY JEOPARDIZE THE  
09:20AM 6 PRESENTATION OF YOUR --

09:20AM 7 MR. COOPERSMITH: THAT'S CORRECT, YOUR HONOR.

09:20AM 8 THE COURT: OKAY.

09:21AM 9 MR. COOPERSMITH: WHAT WE WOULD DO IS WE WOULD CALL  
09:21AM 10 MR. SONNIER, AND THEN THE NEXT THING THAT WOULD HAVE TO HAPPEN  
09:21AM 11 IS THIS EXHIBIT ISSUE, BECAUSE WE'RE PLANNING TO REST AFTER  
09:21AM 12 THESE EXHIBITS ARE ADMITTED.

09:21AM 13 THE COURT: OKAY. ALL RIGHT. THANK YOU.

09:21AM 14 SO A COUPLE OF THINGS ON THAT.

09:21AM 15 MR. SONNIER WILL TESTIFY. WE'VE HAD BRIEF PREVIOUS  
09:21AM 16 DISCUSSIONS ABOUT HIS TESTIMONY AT THE CHARGING CONFERENCE.  
09:21AM 17 WE'VE DISCUSSED WHAT, IF ANYTHING, WOULD BE DONE IN REGARDS TO  
09:21AM 18 HIS TESTIMONY AND IN REGARDS TO ANOTHER INSTRUCTION, POTENTIAL  
09:21AM 19 INSTRUCTION.

09:21AM 20 I THINK OUR DISCUSSION YESTERDAY SAID THAT WE WOULD ENGAGE  
09:21AM 21 THAT -- REENGAGE OUR CHARGING DISCUSSION AFTER MR. SONNIER'S  
09:21AM 22 TESTIMONY, AND THAT WOULD INFORM WHETHER OR NOT THERE'S GOING  
09:21AM 23 TO BE A REBUTTAL CASE FROM THE GOVERNMENT, AT LEAST AS TO THAT  
09:21AM 24 EVIDENCE.

09:21AM 25 MR. COOPERSMITH: YES, YOUR HONOR.

09:21AM 1 I UNDERSTAND THAT THE GOVERNMENT, AFTER SEEING THE  
09:21AM 2 TESTIMONY WHEN IT'S COMPLETE, WANTS TO TAKE THE AFTERNOON TO --  
09:21AM 3 OR AT LEAST HAVE DISCUSSION WITH THE COURT ABOUT THE  
09:21AM 4 INSTRUCTION.

09:21AM 5 THE COURT: RIGHT.

09:21AM 6 MR. COOPERSMITH: WE'RE, OF COURSE, HAPPY TO DO  
09:22AM 7 THAT.

09:22AM 8 THERE IS A MOTION THAT WE FILED. THERE'S ONE EXHIBIT THAT  
09:22AM 9 WE WANT TO ADMIT THROUGH MR. SONNIER, AND WE DID PROVIDE IT TO  
09:22AM 10 THE COURT. IT'S THE EMAIL THAT IS FROM THE ALS SUPERVISOR.

09:22AM 11 THE COURT: 20832?

09:22AM 12 MR. COOPERSMITH: I THINK THAT IS THE NUMBER,  
09:22AM 13 YOUR HONOR.

09:22AM 14 AND I DON'T KNOW WHAT THE GOVERNMENT'S POSITION IS ON  
09:22AM 15 THAT, BUT MR. BRECHER IS PREPARED TO ARGUE THAT POINT TO THE  
09:22AM 16 EXTENT IT NEEDS TO BE ARGUED.

09:22AM 17 THE COURT: OKAY. ALL RIGHT. THANK YOU.

09:22AM 18 MR. LEACH: AND MR. BOSTIC WILL BE HANDLING THIS  
09:22AM 19 ISSUE FOR THE GOVERNMENT.

09:22AM 20 THE COURT: ALL RIGHT. THANK YOU.

09:22AM 21 WELL, LET'S TALK ABOUT THAT NOW.

09:22AM 22 MR. LEACH: YOUR HONOR, THERE WAS ONE THING I WANTED  
09:22AM 23 TO SAY ON THE COURT'S ORDER.

09:22AM 24 THE COURT: YES.

09:22AM 25 MR. LEACH: I'M JUST LOOKING QUICKLY THROUGH THE

09:22AM 1 PAGES THAT MR. COOPERSMITH CITED FOR 20817, PAGES 26 THROUGH  
09:22AM 2 54.

09:22AM 3 AS I LOOK AT THE DOCUMENT, IT LOOKS TO ME LIKE THESE ARE  
09:22AM 4 PORTIONS OF THE APPLICATION THAT WERE PREPARED BY THERANOS, AND  
09:22AM 5 I DON'T KNOW IF THAT'S RELEVANT TO THE COURT'S ANALYSIS OR NOT,  
09:23AM 6 BUT I JUST WANTED TO MAKE THAT OBSERVATION.

09:23AM 7 THE COURT: THANK YOU. THANK YOU.

09:23AM 8 MR. COOPERSMITH: AND THAT'S EXACTLY WHY I BROUGHT  
09:23AM 9 IT TO THE COURT'S ATTENTION.

09:23AM 10 THE COURT: I HAVE SOME VAGUE RECOLLECTION ABOUT  
09:23AM 11 THAT. OKAY, SO I'LL REVIEW THAT. THANK YOU.

09:23AM 12 MR. LEACH: THANK YOU, YOUR HONOR.

09:23AM 13 MR. BRECHER: GOOD MORNING, YOUR HONOR.

09:23AM 14 THE COURT: GOOD MORNING. SO 20832 IS THE -- SEEMS  
09:23AM 15 TO BE THE EMAIL. IS IT FOUR PAGES?

09:23AM 16 MR. BRECHER: THAT'S CORRECT, YOUR HONOR.

09:23AM 17 THE FIRST PAGE IS A PLACE HOLDER. THE WAY THE GOVERNMENT  
09:23AM 18 PRODUCED THESE DOCUMENTS, WE GOT THE NATIVE .MSG FILES, AND  
09:23AM 19 THEN WE GOT THESE BATES STAMPED PLACE HOLDER DOCUMENTS.

09:23AM 20 THE COURT: OKAY.

09:23AM 21 MR. BRECHER: YOUR HONOR, THIS IS THE ONLY EXHIBIT  
09:23AM 22 THAT WE WOULD SEEK TO OFFER INTO EVIDENCE THROUGH MR. SONNIER.

09:23AM 23 THERE IS ONE EXHIBIT THAT I ALERTED MR. BOSTIC AND HIS  
09:23AM 24 TEAM TO THAT WE MIGHT WANT TO PUBLISH AS A DEMONSTRATIVE.

09:23AM 25 BUT IT SEEMS TO ME THAT THERE'S BEEN A SERIES OF

09:24AM 1 CONVERSATIONS, AND I KNOW THAT THE COURT'S RULING ON THE SCOPE  
09:24AM 2 OF MR. SONNIER'S TESTIMONY LEFT OPEN THE QUESTION OF WHETHER  
09:24AM 3 THESE COMMUNICATIONS WERE ADMISSIBLE, BUT I KNOW THAT THAT HAS  
09:24AM 4 BEEN AN ONGOING CONCERN FOR THE GOVERNMENT.

09:24AM 5 SO I JUST THOUGHT IT WOULD BE HELPFUL, BEFORE WE CALL HIM  
09:24AM 6 TO THE STAND, TO ADDRESS THAT ISSUE. THAT WAY I CAN ADJUST MY  
09:24AM 7 EXAMINATION DEPENDING ON THE COURT'S RULING.

09:24AM 8 BUT I THINK THE QUESTION IS, IS THE DOCUMENT AUTHENTIC?  
09:24AM 9 IS IT RELEVANT? IS IT NONHEARSAY OR OFFERED FOR A NONHEARSAY  
09:24AM 10 PURPOSE? ET CETERA.

09:24AM 11 AND ON AUTHENTICITY, I DON'T THINK THERE'S ANY QUESTION  
09:24AM 12 THAT THE CASE LAW IS QUITE CLEAR. THESE ARE DOCUMENTS PRODUCED  
09:24AM 13 BY THE GOVERNMENT IN RESPONSE TO A COURT ORDER, SO IF THEY'RE  
09:24AM 14 NOT AUTHENTIC, THAT WOULD BE QUITE A PROBLEM.

09:24AM 15 AS FOR HEARSAY, I KNOW THAT THERE WAS SOME DISCUSSION THAT  
09:24AM 16 MR. BOSTIC AND MR. COOPERSMITH HAD I BELIEVE AT MONDAY'S  
09:24AM 17 HEARING THAT I REGRETTABLY MISSED.

09:24AM 18 BUT AS THE COURT KNOWS, AND HOPEFULLY YOU'VE SEEN FROM OUR  
09:25AM 19 MOTION, THERE'S QUITE A RANGE OF CASE LAW FROM THE  
09:25AM 20 NINTH CIRCUIT AND OTHER CIRCUITS CONFIRMING THAT THE DEPARTMENT  
09:25AM 21 OF JUSTICE IS INDEED A PARTY OPPONENT SUBJECT TO THE NONHEARSAY  
09:25AM 22 RULE IN 801(D) (2) .

09:25AM 23 THE COURT: MAY I INTERRUPT YOU FOR JUST A MOMENT?

09:25AM 24 MAYBE I SHOULD ASK MR. BOSTIC HIS INITIAL THOUGHTS ON  
09:25AM 25 THIS.

09:25AM 1 MR. BRECHER: OH, PLEASE.

09:25AM 2 THE COURT: MR. BOSTIC.

09:25AM 3 MR. BOSTIC: YES. THANK YOU, YOUR HONOR.

09:25AM 4 SO MR. BRECHER IS CORRECT THAT THERE'S NO DISPUTE HERE AS  
09:25AM 5 TO AUTHENTICITY.

09:25AM 6 THE GOVERNMENT'S CONCERNS DO FOCUS ON RELEVANCE, POSSIBLE  
09:25AM 7 403 ISSUES, AND ALSO HEARSAY ISSUES.

09:25AM 8 AND I'LL START WITH HEARSAY ISSUES SINCE THAT'S WHAT THE  
09:25AM 9 BULK OF THE DEFENSE FILING ADDRESSED.

09:25AM 10 AFTER READING THE CASE LAW LAST NIGHT AFTER THE DEFENSE  
09:25AM 11 FILING, I DON'T THINK IT'S ANYWHERE NEAR AS SIMPLE AS THE  
09:25AM 12 DEFENSE VIEWS IT. THE CASES CITED BY THE DEFENSE ARE MARKEDLY  
09:25AM 13 DISTINGUISHABLE FROM THE SITUATION HERE.

09:25AM 14 SO JUST TO BE CLEAR ABOUT THE EMAIL THAT WE'RE TALKING  
09:25AM 15 ABOUT HERE, THIS IS AN INTERNAL U.S. ATTORNEY'S OFFICE EMAIL  
09:26AM 16 FROM A SUPPORT STAFF MEMBER TO PROSECUTING LAWYERS PROVIDING  
09:26AM 17 SOME IDEAS ABOUT HOW TO HANDLE AN E-DISCOVERY CHALLENGE.

09:26AM 18 IN CONTRAST, NONE OF THE CASES CITED BY THE DEFENSE DEAL  
09:26AM 19 WITH THAT KIND OF INTERNAL COMMUNICATION, CERTAINLY NOTHING  
09:26AM 20 RELATING TO THIS KIND OF NONPROSECUTION TECHNICAL TYPE ISSUE.

09:26AM 21 VAN GRIFFIN IS THE MAIN CASE RELIED ON BY THE DEFENSE.  
09:26AM 22 THAT RELATES TO A MANUAL PUBLISHED BY THE RELEVANT GOVERNMENTAL  
09:26AM 23 AGENCY.

09:26AM 24 HERE WE'RE NOT TALKING ABOUT THE JUSTICE MANUAL OR THE  
09:26AM 25 U.S. ATTORNEY'S MANUAL OR SOMETHING SIMILAR.

09:26AM 1 SO I THINK THERE'S A BIG DIFFERENCE THERE WHEREAS THAT WAS  
09:26AM 2 AN OFFICIAL PUBLICATION OF THE AGENCY. THIS IS SIMPLY A  
09:26AM 3 COMMUNICATION BY AN EMPLOYEE OF THE AGENCY.

09:26AM 4 THE MORGAN CASE RELATES TO A STATEMENT IN A SWORN  
09:26AM 5 AFFIDAVIT MADE TO A MAGISTRATE, AND IT'S UNDERSTANDABLE THAT  
09:27AM 6 THAT WOULD BE VIEWED AS A STATEMENT BY A PARTY. IT'S SUBMITTED  
09:27AM 7 OUTSIDE OF THE GOVERNMENT. IT'S MADE UNDER OATH TO THE COURT,  
09:27AM 8 SO IT MAKES SENSE THAT THE PARTY WOULD BE BOUND BY THAT.

09:27AM 9 BRANHAM, THE SIXTH CIRCUIT CASE, RELATES TO STATEMENTS BY  
09:27AM 10 A GOVERNMENT INFORMANT TO A DEFENDANT RELEVANT TO AN ENTRAPMENT  
09:27AM 11 DEFENSE BY THAT DEFENDANT.

09:27AM 12 SO THAT COURT NOTED, INTERESTINGLY, THAT THAT STATEMENT  
09:27AM 13 WASN'T NECESSARILY COMING IN FOR ITS TRUTH, OR IT DIDN'T NEED  
09:27AM 14 TO NECESSARILY COME IN FOR ITS TRUTH.

09:27AM 15 THE MAIN ISSUE WAS THAT IT WAS SET AND THE EFFECT THAT  
09:27AM 16 THAT MIGHT HAVE ON THE ENTRAPMENT DEFENSE.

09:27AM 17 BUT, AGAIN, I'LL POINT OUT THAT WAS AN EXTERNAL STATEMENT  
09:27AM 18 MADE BY THE GOVERNMENT TO SOMEONE OUTSIDE OF THE GOVERNMENT  
09:27AM 19 WORKING IN HIS CAPACITY THAT INVOLVED HIM MAKING THOSE  
09:27AM 20 STATEMENTS TO SOMEONE OUTSIDE OF THE GOVERNMENT.

09:27AM 21 THE KATTAR CASE IS A FIRST CIRCUIT CASE. THAT RELATES TO  
09:27AM 22 STATEMENTS IN GOVERNMENT BRIEFS, IN GOVERNMENT FILINGS, AND  
09:27AM 23 THAT COURT EXPRESSLY SAID THAT IT WASN'T DECIDING WHETHER  
09:28AM 24 801(D) (2) (D) APPLIED THERE.

09:28AM 25 INSTEAD, IT FOUND THAT THAT STATEMENT HAD BEEN ADOPTED BY

09:28AM 1 THE GOVERNMENT BECAUSE THE ATTORNEYS IN THAT CASE HAD POINTED  
09:28AM 2 TO THOSE FILINGS IN OTHER COURTS AND HAD HELD THEM OUT TO OTHER  
09:28AM 3 COURTS AS TRUE, THEREBY ADOPTING THE STATEMENTS AND JUSTIFYING  
09:28AM 4 AND BINDING THE GOVERNMENT BY THEM.

09:28AM 5 THE CHANG CASE IN THE NINTH CIRCUIT RELATES TO THE  
09:28AM 6 ASSIGNMENT OF A REGISTRATION NUMBER BY A GOVERNMENT AGENCY.

09:28AM 7 IN THAT CASE, THE ISSUE THAT THE COURT WAS BEING ASKED TO  
09:28AM 8 DECIDE WASN'T EVEN DECIDED BY THE NINTH CIRCUIT BECAUSE THAT  
09:28AM 9 COURT FOUND THAT THAT DEFENDANT HADN'T PROPERLY PRESERVED THE  
09:28AM 10 ISSUE FOR APPEAL, SO THAT CASE DOESN'T REALLY MOVE THE NEEDLE  
09:28AM 11 ONE WAY OR THE OTHER.

09:28AM 12 THE BAKSHINIAN CASE IN THE CENTRAL DISTRICT OF CALIFORNIA  
09:28AM 13 RELATES TO A STATEMENT BY A PROSECUTOR IN ANOTHER TRIAL  
09:28AM 14 RELATING TO THE SAME CONDUCT.

09:28AM 15 SO, AGAIN, THERE WE'RE TALKING ABOUT A STATEMENT BY A  
09:28AM 16 GOVERNMENT EMPLOYEE WHOSE JOB IS TO ACT AS A REPRESENTATIVE  
09:29AM 17 MAKING A STATEMENT ON THE RECORD, AND SO I THINK THAT ANALYSIS  
09:29AM 18 IS REALLY DIFFERENT FROM WHAT WE'RE LOOKING AT HERE.

09:29AM 19 FINALLY, THE BAGCHO CASE -- THAT'S B-A-G-C-H-O -- THAT'S  
09:29AM 20 THE D.C. DISTRICT, THAT COURT HELD THAT A STATEMENT BY ANOTHER  
09:29AM 21 AGENCY REGARDING A SOURCE'S RELIABILITY COULD NOT COME IN FOR  
09:29AM 22 ITS TRUTH, SO THAT ACTUALLY GOES THE OPPOSITE WAY FROM WHAT THE  
09:29AM 23 DEFENSE IS SUGGESTING.

09:29AM 24 THERE ARE CASES THAT HOLD THAT STATEMENTS BY PROSECUTORS  
09:29AM 25 FALL UNDER THIS EXCEPTION, BUT THAT'S NOT WHAT WE'RE LOOKING AT

09:29AM 1 HERE. WE'RE NOT LOOKING AT SOMETHING THAT A REPRESENTATIVE OF  
09:29AM 2 THE GOVERNMENT STATED IN COURT IN CONNECTION WITH A CASE.

09:29AM 3 THERE ARE SEVENTH CIRCUIT CASES THAT HOLD CONTRARY TO THE  
09:29AM 4 DEFENSE'S ARGUMENT THAT, FOR EXAMPLE, IN THE SEVENTH CIRCUIT,  
09:29AM 5 THAT THAT CIRCUIT GENERALLY DECLINES TO APPLY THIS RULE,  
09:29AM 6 801(D) (2), TO STATEMENTS MADE BY GOVERNMENT EMPLOYEES IN  
09:29AM 7 CRIMINAL CASES.

09:30AM 8 THAT'S BASED ON THE COMMON LAW PRINCIPLE THAT NO  
09:30AM 9 INDIVIDUAL SHOULD BE ABLE TO BIND A SOVEREIGN, AND THAT'S  
09:30AM 10 UNITED STATES VERSUS ZIZZO, Z-I-Z-Z-O, 120 F.3D 1338.

09:30AM 11 SIMILARLY, UNITED STATES VERSUS PREVATTE, P-R-E-V-A-T-T-E,  
09:30AM 12 THAT'S 16 F.3D 767, HOLDS SIMILARLY.

09:30AM 13 ANOTHER CASE, UNITED STATES VERSUS ARROYO, 406 F.3D 881,  
09:30AM 14 ALSO SEVENTH CIRCUIT, THAT CASE SAYS THAT WE HAVE HELD THAT  
09:30AM 15 GOVERNMENT AGENTS ARE NOT PARTY OPPONENTS FOR PURPOSES OF  
09:30AM 16 801(D) (2) .

09:30AM 17 AND IN THE FIFTH CIRCUIT, UNITED STATES VERSUS GARZA,  
09:30AM 18 THAT'S 448 F.3D 294, THAT COURT HELD THAT 801(D) (2) (D) DID NOT  
09:30AM 19 APPLY TO STATEMENTS MADE BY A GOVERNMENT INVESTIGATOR,  
09:30AM 20 REASONING THAT, PARTLY THAT BECAUSE THE INVESTIGATOR'S  
09:31AM 21 RECOMMENDATION, WHICH WAS NOT TO PURSUE PROSECUTION, WAS NOT  
09:31AM 22 ADOPTED ULTIMATELY BY DOJ, THAT IT DIDN'T MAKE SENSE TO HOLD  
09:31AM 23 THOSE CONTENTS AS A STATEMENT BY THE GOVERNMENT.

09:31AM 24 SO HERE, AGAIN, WE'RE TALKING ABOUT STATEMENTS BY AN  
09:31AM 25 EMPLOYEE OF OUR OFFICE THAT HAVEN'T BEEN ADOPTED BY THE

09:31AM 1 GOVERNMENT. THIS IS NOT AN EMPLOYEE WITH A ROLE WHO SPEAKS FOR  
09:31AM 2 THE OFFICE OR WHO IS ABLE TO BIND THE OFFICE OF THE GOVERNMENT  
09:31AM 3 GENERALLY.

09:31AM 4 SO I DON'T THINK WE'RE REALLY ON ALL FOURS WITH THE CASE  
09:31AM 5 LAW CITED BY THE DEFENSE.

09:31AM 6 THE COURT: ALL RIGHT. THANK YOU.

09:31AM 7 LET ME NOTE AT THE OUTSET THAT THIS IS, I BELIEVE -- IS IT  
09:31AM 8 1479, YOUR MOTION?

09:31AM 9 MR. BRECHER: THAT'S CORRECT, YOUR HONOR.

09:31AM 10 THE COURT: RIGHT. THIS WAS FILED ABOUT 8:30 LAST  
09:31AM 11 NIGHT.

09:31AM 12 MR. BRECHER: THAT'S CORRECT.

09:31AM 13 THE COURT: RIGHT. AND I THINK YOU RECEIVED THE  
09:31AM 14 DOCUMENT FROM THE GOVERNMENT, THAT IS, 20832, FROM THE  
09:31AM 15 GOVERNMENT ON JUNE 2ND?

09:31AM 16 MR. BRECHER: THAT IS CORRECT, YOUR HONOR.

09:31AM 17 THE COURT: SO I SHOULD TELL YOU THAT THE LATE  
09:31AM 18 FILING PUTS THE COURT AT A DISADVANTAGE, OF COURSE, AND I  
09:31AM 19 APPRECIATE BOTH OF YOUR ATTENTION TO THE CASES HERE.

09:32AM 20 BUT LET ME HEAR YOUR RESPONSE TO MR. BOSTIC'S  
09:32AM 21 OBSERVATIONS.

09:32AM 22 MR. BRECHER: SURE. AND FIRST OF ALL, YOUR HONOR, I  
09:32AM 23 THINK I MAY BE ABLE TO SHORT CIRCUIT SOME OF THESE ISSUES.

09:32AM 24 FIRST, JUST SPEAKING TO THE CASE CITATIONS THAT MR. BOSTIC  
09:32AM 25 ARTICULATES AND THE DISTINCTIONS HE'S OFFERING, THESE ARE

09:32AM 1 DISTINCTIONS THAT DON'T MAKE A DIFFERENCE. THE VAN GRIFFIN  
09:32AM 2 CASE FROM THE NINTH CIRCUIT REPRESENTS A MUCH BROADER AND MUCH  
09:32AM 3 MORE EXTENSIVE READING OF RULE 801(D) (2), AND I THINK THAT'S  
09:32AM 4 WHERE THE GOVERNMENT'S ARGUMENT STARTS TO GO OFF THE TRACKS  
09:32AM 5 HERE, BECAUSE IT'S ENTIRELY DIVORCED FROM THE TEXT OF RULE 801  
09:32AM 6 AND FROM THE ADVISORY COMMITTEE NOTES.

09:32AM 7 MR. BOSTIC TALKS ABOUT PUBLIC STATEMENTS, STATEMENTS MADE  
09:32AM 8 IN A REPRESENTATIVE CAPACITY.

09:32AM 9 FIRST OF ALL, THERE'S A SEPARATE SUBSECTION OF 801(D) THAT  
09:33AM 10 REFERS TO STATEMENTS MADE IN A REPRESENTATIVE CAPACITY.

09:33AM 11 WE TALK ABOUT THE SUBSECTION DEALING WITH STATEMENTS MADE  
09:33AM 12 BY AN EMPLOYEE ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT.  
09:33AM 13 THEY'RE TWO SEPARATE GROUNDS OF ADMISSIBILITY.

09:33AM 14 WHAT MR. BOSTIC IS ARTICULATING IS A THEORY THAT SEEMS TO  
09:33AM 15 HAVE BEEN ENDORSED BY A MINORITY OF CIRCUITS, BUT NOT THIS  
09:33AM 16 ONE -- THIS ONE GOES THE OTHER WAY -- THAT THERE'S SOME SPECIAL  
09:33AM 17 CARVE OUT IN CRIMINAL CASES WHERE THE RULE AGAINST -- WHERE THE  
09:33AM 18 RULE OF PARTY OPPONENT ADMISSIONS APPLIES ONLY AGAINST THE  
09:33AM 19 DEFENDANTS AND THE GOVERNMENT IS FOR SOME REASON EXEMPT FROM  
09:33AM 20 THEM.

09:33AM 21 WE KNOW FROM THE NINTH CIRCUIT, WE KNOW IN MOST CIRCUITS  
09:33AM 22 THAT THE DEPARTMENT OF JUSTICE IS AUTHORIZED TO BIND THE  
09:33AM 23 GOVERNMENT.

09:33AM 24 BUT, AGAIN, THAT'S NOT EVEN THE THEORY UNDER WHICH WE'RE  
09:33AM 25 SEEKING ADMISSION.

09:33AM 1 SECOND, YOUR HONOR, I DON'T KNOW WHAT IS THE DIFFERENCE  
09:33AM 2 BETWEEN AN INTERNAL COMMUNICATION AND A PUBLIC FACING  
09:33AM 3 COMMUNICATION. THERE ARE A WHOLE BUNCH OF INTERNAL  
09:33AM 4 COMMUNICATIONS MADE BY MR. BALWANI WITHIN THERANOS, TEXTS TO  
09:34AM 5 MS. HOLMES THAT WERE ADMITTED AS STATEMENTS OF A PARTY  
09:34AM 6 OPPONENT.

09:34AM 7 WHERE DOES THAT COME FROM? IT CERTAINLY DOES NOT COME  
09:34AM 8 FROM THE TEXT OF RULE 801. IT CERTAINLY DOESN'T COME FROM THE  
09:34AM 9 COMMENTARY OF RULE 801, WHICH IS WHY THE DISTINCTIONS OFFERED  
09:34AM 10 BY THE GOVERNMENT JUST DON'T WORK.

09:34AM 11 BUT I WANT TO JUMP PAST THAT A LITTLE BIT AND SAY THAT I  
09:34AM 12 DON'T NEED THIS DOCUMENT TO COME IN FOR ITS TRUTH. THIS IS  
09:34AM 13 ALSO RELEVANT AS NOTICE TO THE GOVERNMENT, NOTICE TO THESE  
09:34AM 14 PROSECUTORS OF THEIR OPTIONS.

09:34AM 15 THE COURT: SO IF -- SO IF --

09:34AM 16 MR. BRECHER: PLEASE.

09:34AM 17 THE COURT: I THINK YOU NOTE THAT IN YOUR PLEADINGS  
09:34AM 18 AND YOU'VE MENTIONED THAT BEFORE IN OUR ANTICIPATORY DISCUSSION  
09:34AM 19 ON THIS ISSUE, THAT IT WOULD SERVE YOUR PURPOSE IF THIS WERE  
09:34AM 20 BROUGHT IN JUST FOR NOTICE TO THE GOVERNMENT, AND THAT -- IT  
09:34AM 21 SEEMS TO ME THAT THAT WOULD ALLOW YOUR WITNESSES, YOUR  
09:34AM 22 ARGUMENT, I BELIEVE, ALLOW YOUR WITNESS TO SAY THE GOVERNMENT  
09:34AM 23 KNEW THEY COULD HAVE DONE SOMETHING OR THEY KNEW AT LEAST THAT  
09:35AM 24 THIS DOCUMENT SUGGESTS THAT SOMEONE IN THE GOVERNMENT SAID YOU  
09:35AM 25 COULD DO THIS.

09:35AM 1 MR. BRECHER: THAT'S CORRECT.

09:35AM 2 AND IN TERMS OF THIS BEING AN INTERNAL DOCUMENT -- I'M  
09:35AM 3 SORRY, IT'S DIFFICULT WITH THE MASK -- THAT ACTUALLY FAVORS  
09:35AM 4 ADMITTING THE DOCUMENT UNDER THE THEORY THAT YOUR HONOR  
09:35AM 5 ARTICULATED, AND THAT'S BECAUSE -- NOT TO SPOIL OUR DISCUSSION  
09:35AM 6 ABOUT THE ADVERSE INFERENCE INSTRUCTION -- BUT AS THE COURT  
09:35AM 7 KNOWS FROM THAT CASE LAW, ONE OF THE FACTORS TO BE CONSIDERED  
09:35AM 8 IS WHETHER THE INFORMATION ABOUT PRESERVATION ISSUES WERE  
09:35AM 9 BROUGHT TO THE ATTENTION OF THE PROSECUTING TEAM, MEANING THE  
09:35AM 10 PROSECUTING ATTORNEYS.

09:35AM 11 THIS IS AN EMAIL SENT TO THE THREE MEMBERS OF THE  
09:35AM 12 PROSECUTING TEAM IN THIS CASE. IT IS DEAD ON IN TERMS OF WHAT  
09:35AM 13 THE CASE LAW REQUIRES THE COURT TO CONSIDER.

09:35AM 14 SO IF THIS DOESN'T COME IN FOR THE TRUTH, I'M PERFECTLY  
09:35AM 15 HAPPY WITH THAT.

09:35AM 16 MR. BOSTIC ALSO MENTIONED AT THE OUTSET, BUT I DON'T THINK  
09:36AM 17 HAD A CHANCE TO ARGUE, SO I CERTAINLY WANT TO GIVE HIM THAT,  
09:36AM 18 SOME CONCERNS ABOUT RELEVANCE AND 403 ISSUES.

09:36AM 19 BUT THAT ISSUE, I THINK, WAS ADDRESSED BY THE COURT'S  
09:36AM 20 PRIOR RULING. THIS IS EXACTLY THE PLAN THAT WE HAVE  
09:36AM 21 ARTICULATED FROM THE BEGINNING.

09:36AM 22 WE'LL SHOW THIS TO MR. SONNIER, SHOW IT TO THE JURY, READ  
09:36AM 23 THE EMAIL, AND HAVE HIM SAY, YEAH, GET A VENDOR, THAT WOULD  
09:36AM 24 HAVE WORKED, SEIZE THE SERVERS, THAT WOULD HAVE WORKED.

09:36AM 25 THAT'S THE PURPOSE OF OFFERING THIS DOCUMENT.

09:36AM 1 THE COURT: TELL ME WHAT THE NOTICE IS. WHAT IS THE  
09:36AM 2 NOTICE TO THE GOVERNMENT OR TO THESE LAWYERS OR TO THE  
09:36AM 3 PROSECUTION? WHAT IS THAT?

09:36AM 4 MR. BRECHER: THE NOTICE IS WHAT THE EMAIL ITSELF  
09:36AM 5 FROM THE ALS SUPERVISOR ARTICULATES. THERE'S A CATEGORY AND A  
09:36AM 6 BULLETED LIST AT THE BOTTOM OF THAT EMAIL WHICH IS CALLED  
09:36AM 7 POSSIBLE ROUTES FORWARD, AND IT OFFERS A SERIES OF OPTIONS, AND  
09:36AM 8 TWO OF THOSE OPTIONS ARE ONES THAT I WANT TO TALK ABOUT WITH  
09:36AM 9 OUR EXPERT.

09:36AM 10 THE COURT: OKAY.

09:36AM 11 MR. BOSTIC, AS TO -- IF THIS IS ADMITTED NOT FOR THE TRUTH  
09:36AM 12 OF THE MATTER ASSERTED, BUT MERELY AS TO THE NOTICE, AS  
09:37AM 13 MR. BRECHER SUGGESTS, WHAT ARE YOUR THOUGHTS ON THAT?

09:37AM 14 MR. BOSTIC: SO, YOUR HONOR, I UNDERSTAND HOW THIS  
09:37AM 15 DOCUMENT THEN FITS INTO THE DEFENDANT'S THEORY.

09:37AM 16 I'M STILL UNCLEAR ON HOW IT INFORMS THE OPINION OF A  
09:37AM 17 TESTIFYING EXPERT IN SQL DATABASES. WHY IT DOES IT MATTER TO  
09:37AM 18 MR. SONNIER'S OPINION ABOUT WHAT WAS TECHNICALLY POSSIBLE, THAT  
09:37AM 19 THE GOVERNMENT KNEW OR DIDN'T KNOW SOMETHING ON A CERTAIN DATE.

09:37AM 20 SO THAT'S MY 401 AND 403 CONCERN THERE.

09:37AM 21 THE COURT: I SEE.

09:37AM 22 MR. BRECHER: YOUR HONOR, IF I COULD JUST RESPOND TO  
09:37AM 23 THAT BRIEFLY.

09:37AM 24 THAT IS, I THINK, EXACTLY WHAT THE COURT DID RESOLVE IN  
09:37AM 25 YOUR PRIOR LIS RULING. YOU OUTLINED EXACTLY WHAT WE WANTED TO

09:37AM 1 DO IN THAT RULING AND SAID, CABINED TO THAT EFFORT, VIS-A-VIS  
09:37AM 2 THIS NOTICE, THAT DOESN'T RAISE CONCERNS ABOUT A MINI TRIAL  
09:37AM 3 UNDER 403, THAT'S RELEVANT UNDER 401.

09:37AM 4 AND NOW WE'RE JUST RELITIGATING WHAT MS. VOLKAR AND I  
09:37AM 5 SPENT QUITE A BIT OF TIME ARGUING THE OTHER WEEK.

09:38AM 6 MR. BOSTIC: I THINK THE DISTINCTION, YOUR HONOR, IS  
09:38AM 7 WHAT IS GENERALLY ADMISSIBLE DURING THE CASE VERSUS WHAT CAN  
09:38AM 8 COME IN WITH A CERTAIN SPONSORING WITNESS.

09:38AM 9 MR. BRECHER: YOUR HONOR, AS THE COURT KNOWS FROM  
09:38AM 10 THE ARGUMENT THAT YOU HEARD ON MONDAY FROM MS. WALSH, THIS  
09:38AM 11 NOTION OF A SPONSORING WITNESS, IN ORDER TO HAVE PERSONAL  
09:38AM 12 KNOWLEDGE, ALL THAT MATTERS IS THAT MR. SONNIER BE ABLE TO READ  
09:38AM 13 THE EXHIBIT IN REAL TIME AND TELL THE JURY WHAT HE'S  
09:38AM 14 PERCEIVING.

09:38AM 15 AGAIN, I DON'T KNOW IF THE COURT HAS FORMALLY RESOLVED THE  
09:38AM 16 DISPUTE OVER WHETHER MR. OKANO IS GOING TO TESTIFY, BUT IT  
09:38AM 17 SOUNDS LIKE HE'S NOT. WE DON'T NEED A SPONSORING WITNESS.

09:38AM 18 THIS DOCUMENT IS ADMISSIBLE, AND IT WILL INFORM  
09:38AM 19 MR. SONNIER AND IT WILL HELP GIVE LIFE TO MR. SONNIER'S OPINION  
09:38AM 20 THAT NOT ONLY COULD THIS HAVE BEEN DONE, BUT THE GOVERNMENT,  
09:38AM 21 THESE PROSECUTORS WERE ADVISED THAT IT COULD HAVE BEEN DONE.

09:38AM 22 THAT'S EXACTLY WHAT THE COURT ALREADY RULED.

09:38AM 23 THE COURT: LET ME MOVE THE CONVERSATION FOR JUST A  
09:38AM 24 MOMENT AS TO MR. SONNIER'S TESTIMONY, AND THERE'S STILL A  
09:39AM 25 PENDING DISCUSSION ABOUT WHETHER OR NOT HE'S GOING TO BE AN

09:39AM 1 EXPERT WITNESS OR A DUAL FACT AND EXPERT WITNESS.

09:39AM 2 CAN YOU TELL ME A LITTLE BIT ABOUT THAT?

09:39AM 3 MR. BRECHER: SURE. I'M HAPPY TO SPEAK TO THAT,  
09:39AM 4 YOUR HONOR.

09:39AM 5 I THINK THIS CONVERSATION THAT WE WERE JUST HAVING, THIS  
09:39AM 6 ESSENTIALLY IS THAT DISPUTE.

09:39AM 7 IF THIS EMAIL COMES IN AND MR. SONNIER IS READING IT, I  
09:39AM 8 GUESS IT'S THE EMAIL THAT IS THE FACT EVIDENCE, NOT NECESSARILY  
09:39AM 9 MR. SONNIER'S TESTIMONY. BUT THAT MAY MOVE ACROSS THE LINE  
09:39AM 10 INTO FACT WITNESS TESTIMONY.

09:39AM 11 I, FRANKLY, DON'T HAVE A STRONG VIEW ABOUT THAT.

09:39AM 12 AND THEN THE BACKGROUND ASSUMPTIONS THAT FORM THE BASIS  
09:39AM 13 FOR HIS OPINIONS, I DON'T PARTICULARLY HAVE A STRONG VIEW ABOUT  
09:39AM 14 WHETHER THAT WOULD BE FACT WITNESS TESTIMONY, BUT I CAN IMAGINE  
09:39AM 15 CIRCUMSTANCES IN WHICH ASKING HIM, WELL, WHAT INFORMED THOSE  
09:39AM 16 ASSUMPTIONS? WHAT DID YOU DO? THAT -- HE WOULD BE DESCRIBING  
09:39AM 17 HIS CONDUCT AND HIS PERSONAL OBSERVATIONS IN A PERCIPIENT WAY.

09:39AM 18 BUT I DON'T HAVE A STRONG VIEW ON IT. THAT'S WHY I THINK  
09:40AM 19 IT WOULD PROBABLY BE BEST TO SEE HOW IT COMES IN, AND IF  
09:40AM 20 MR. BOSTIC HAS OBJECTIONS, I'LL CERTAINLY FOLLOW THE COURT'S  
09:40AM 21 LEAD ON HOW TO PHRASE THOSE QUESTIONS.

09:40AM 22 THE COURT: WELL, I HAD SOME CONCERN, AFTER I READ  
09:40AM 23 THE DECLARATION, THE DECLARATION THAT HE SIGNED, AND HE OPINES  
09:40AM 24 AS TO MANY THINGS THAT ARE FACTUAL. I DON'T KNOW THE SOURCE OF  
09:40AM 25 THE INFORMATION.

09:40AM 1 BUT THAT'S SOMETHING THAT I HAD GREAT CONCERN ABOUT. IF  
09:40AM 2 HE'S GOING TO COME UP AND TESTIFY AS HE DID IN HIS DECLARATION,  
09:40AM 3 I THINK THERE ARE SOME ISSUES THERE.

09:40AM 4 BUT WHAT YOU'RE TELLING ME IS THAT IT'S NOT YOUR INTENT TO  
09:40AM 5 DO THAT.

09:40AM 6 MR. BRECHER: NO, YOUR HONOR.

09:40AM 7 I THINK THE WAY I WOULD FRAME THE QUESTIONS IS BEFORE WE  
09:40AM 8 GET INTO THE SUBSTANCE OF HIS OPINIONS, HOW YOU COULD  
09:40AM 9 RECONSTRUCT THIS DATABASE, THAT IT'S VERY DOABLE, THAT IT'S  
09:40AM 10 SOMETHING PEOPLE DO ALL OF THE TIME, THE JURY HAS TO  
09:40AM 11 UNDERSTAND, WHAT ARE WE TALKING ABOUT AND WHY ARE TALKING ABOUT  
09:40AM 12 IT? IF THERE'S SOME COPY, WHY CAN'T WE USE THAT?

09:40AM 13 AND I THINK THE WAY I WOULD PHRASE THE QUESTIONS IS, TALK  
09:40AM 14 ABOUT THE ASSUMPTIONS, THE FACTUAL ASSUMPTIONS THAT WENT INTO  
09:41AM 15 FORMING YOUR OPINIONS AND WHAT MATERIALS DID YOU VIEW IN THAT  
09:41AM 16 SO THAT THE JURY CAN UNDERSTAND THE CONTEXT OF HIS OPINIONS.

09:41AM 17 BUT, AGAIN, THOSE ARE THE SAME ASSUMPTIONS THAT I THINK,  
09:41AM 18 ALTHOUGH TO BE HONEST, YOUR HONOR, THEY SEEM TO GO BACK AND  
09:41AM 19 FORTH, THE GOVERNMENT SOMETIMES INSISTS IT DESPERATELY NEEDS  
09:41AM 20 THAT INFORMATION IN THE CASE; BUT THEN IT SAYS WELL, WE CAN'T  
09:41AM 21 PUT IT IN THE CASE; BUT THEN SAYS, WELL, IT WOULD BE UNFAIR IF  
09:41AM 22 WE DIDN'T PUT IT IN THE CASE.

09:41AM 23 I HONESTLY DON'T KNOW WHAT THEY WANT, WHICH IS WHY I WOULD  
09:41AM 24 BE ANXIOUS TO BEGIN THE EXAMINATION AND SEE WHAT OBJECTIONS  
09:41AM 25 THEY HAVE.

09:41AM 1 I THINK OUR PRESENTATION IS GOING TO BE FAIR IN TERMS OF  
09:41AM 2 THE ASSUMPTION THAT THE GOVERNMENT REQUESTED INFORMATION, IT  
09:41AM 3 WAS GIVEN A COPY, THAT COPY WAS UNUSABLE, THAT'S NO FAULT OF  
09:41AM 4 THE GOVERNMENT, AND THEN MOVE ON TO, WELL, WHAT ELSE COULD HAVE  
09:41AM 5 BEEN DONE?

09:41AM 6 THAT IS REALLY THE SUBSTANCE OF THE EXAMINATION.

09:41AM 7 THE COURT: MR. BOSTIC.

09:41AM 8 MR. BOSTIC: SO, YOUR HONOR, IF THE QUESTION IS,  
09:41AM 9 DOES THAT TURN MR. SONNIER INTO A PERCIPIENT WITNESS? I DON'T  
09:41AM 10 THINK IT DOES. IF THAT WERE THE CASE, IT WOULD TURN EVERY  
09:42AM 11 EXPERT INTO A PERCIPIENT FACT WITNESS JUST BECAUSE THEY HAVE TO  
09:42AM 12 EXPLAIN THE UNDERLYING CIRCUMSTANCES.

09:42AM 13 SIMILARLY, THE FACT THAT HE HAPPENS TO BE ON THE STAND  
09:42AM 14 WHEN A DOCUMENT COMES INTO EVIDENCE I DON'T THINK MAKES HIM A  
09:42AM 15 FACT WITNESS, EITHER.

09:42AM 16 BUT OTHERWISE I WOULD SUBMIT IT.

09:42AM 17 I ALSO HAVE SOME RESPONSES TO WHAT MR. BRECHER SAID ON THE  
09:42AM 18 HEARSAY POINT, BUT IF THE COURT IS NOT LEANING TOWARDS  
09:42AM 19 ADMITTING THIS EXHIBIT FOR THE TRUTH, THEN I'LL STAND DOWN.

09:42AM 20 THE COURT: WELL, THANK YOU. BOTH OF YOU ARE  
09:42AM 21 PERCEPTIVE IN THAT REGARD, BECAUSE ME -- UNLESS THERE'S  
09:42AM 22 ANYTHING FURTHER FROM YOU, MR. BRECHER, ON THIS, I'D BE  
09:42AM 23 INCLINED TO DENY THE REQUEST TO ADMIT THIS FOR THE TRUTH.

09:42AM 24 BUT I WOULD ALLOW IT TO COME IN FOR NOTICE, FOR THE NOTICE  
09:42AM 25 AS YOU INDICATED, NOT FOR THE TRUTH OF THE MATTER ASSERTED IN

09:42AM 1 ANY OF THESE PARAGRAPHS HERE, ANY OF THESE WRITINGS, BUT ONLY  
09:42AM 2 SOLELY FOR THE ISSUE OF NOTICE AS TO A, I GUESS IT IS A -- THE  
09:43AM 3 THIRD BOLDED PARAGRAPH DOWN, POSSIBLE ROUTES FORWARD.

09:43AM 4 MR. BRECHER: THAT'S FINE, YOUR HONOR.

09:43AM 5 THE ONLY THING I WANTED TO ADD IS JUST SOME CLARIFICATION  
09:43AM 6 THAT MY COLLEAGUE REMINDED ME.

09:43AM 7 BUT ON THAT QUESTION ABOUT FACTUAL ASSUMPTIONS AND FACTUAL  
09:43AM 8 BACKGROUND, IT SOUNDS LIKE WE'RE GETTING CLOSER TO RESOLUTION  
09:43AM 9 HERE.

09:43AM 10 AGAIN, WE WOULDN'T OFFER THAT AS FACT TESTIMONY.

09:43AM 11 THE ONLY THING THAT I THINK MAY CROSS THE LINE IS THE  
09:43AM 12 QUESTION OF, WELL, WHAT DID YOU DO TO DETERMINE THAT THIS COPY  
09:43AM 13 COULDN'T BE OPENED?

09:43AM 14 BUT I -- FRANKLY, I DON'T HAVE STRONG VIEWS ABOUT MOST OF  
09:43AM 15 THIS.

09:43AM 16 THE COURT: WELL, DID HE DO ANYTHING WITH THIS? IS  
09:43AM 17 HE GOING TO TESTIFY ABOUT --

09:43AM 18 MR. BRECHER: HE TRIED TO OPEN IT.

09:43AM 19 THE COURT: AND IS HE GOING TO TESTIFY ABOUT  
09:43AM 20 ANYTHING HE DID IN REGARDS TO WHAT YOU RECEIVED, WHAT YOU HAD?

09:43AM 21 MR. BRECHER: I DIDN'T FOLLOW THE LAST PART OF THE  
09:43AM 22 QUESTION, YOUR HONOR. I'M SORRY.

09:43AM 23 THE COURT: SURE. IS HE GOING TO TESTIFY ABOUT ANY  
09:43AM 24 EXPERIMENT OR CONDUCT THAT HE TOOK IN REGARDS TO THE SAME  
09:43AM 25 DOCUMENT THAT THE GOVERNMENT HAD?

09:43AM 1 MR. BRECHER: THE SAME ENCRYPTED BACKUP COPY? YES,  
09:43AM 2 I THINK HE WOULD SAY, I TRIED TO OPEN IT AND I WAS  
09:44AM 3 UNSUCCESSFUL.

09:44AM 4 THE COURT: AND WHAT DO WE DO ABOUT ANY JUROR  
09:44AM 5 CONFUSION ABOUT THAT?

09:44AM 6 MY UNDERSTANDING IS THAT THE GOVERNMENT PROVIDED THE  
09:44AM 7 DEFENSE A COPY OF WHAT THEY HAD RECEIVED PURSUANT TO THE  
09:44AM 8 SUBPOENA AND YOU HAVE THE SAME THING THAT THEY HAVE.

09:44AM 9 MR. BRECHER: THAT'S CORRECT, YOUR HONOR.

09:44AM 10 THE COURT: SO HOW DO WE DEAL WITH THAT THEN? IS  
09:44AM 11 THERE GOING TO BE SOME CONFUSION ABOUT THE JURY THINKING,  
09:44AM 12 WHAT -- ARE THEY PASSING THIS THING IN THE NIGHT, OR WHAT IS  
09:44AM 13 THIS?

09:44AM 14 MR. BRECHER: I HAD THAT SAME THOUGHT, YOUR HONOR,  
09:44AM 15 AND MY HOPE WAS JUST TO LEAP PAST IT BY ASKING MR. SONNIER, DO  
09:44AM 16 YOU UNDERSTAND WHETHER THE GOVERNMENT GOT A COPY OF THIS?

09:44AM 17 YES.

09:44AM 18 DO YOU UNDERSTAND WHETHER THE DEFENSE GOT A COPY OF THIS?

09:44AM 19 YES.

09:44AM 20 AND TO MAKE CLEAR, YOU DON'T FAULT THE GOVERNMENT? THERE  
09:44AM 21 WAS NO MANIPULATION BY THE GOVERNMENT OF THIS BACKUP COPY, JUST  
09:44AM 22 SO WE CAN GET THAT BACKGROUND OUT OF THE WAY.

09:44AM 23 THERE IS A COPY, BOTH SIDES GOT IT, NO ONE CAN OPEN IT.

09:44AM 24 THE COURT: MR. BOSTIC.

09:44AM 25 MR. BOSTIC: I HAVE A BETTER IDEA, YOUR HONOR, FOR

09:44AM 1 CLEARING UP THAT CONFUSION.

09:45AM 2 I CONTINUE TO BE CURIOUS OR A LITTLE APPREHENSIVE ABOUT  
09:45AM 3 THIS WITNESS TESTIFYING ABOUT THINGS THAT HE DOESN'T HAVE  
09:45AM 4 FIRST-HAND KNOWLEDGE OF.

09:45AM 5 BUT I UNDERSTAND THAT THESE DETAILS NEED TO BE CLEAR FOR  
09:45AM 6 THE JURY, SO NO OBJECTION TO THAT APPROACH.

09:45AM 7 THE COURT: ALL RIGHT. WELL, THANK YOU. THAT WAS A  
09:45AM 8 CONCERN THAT I HAD IS THAT THERE'S -- AND I APPRECIATE YOUR  
09:45AM 9 ATTENTION TO THIS. WE'RE WALKING A FINE LINE, AS WE OFTEN DO  
09:45AM 10 WITH EVIDENTIARY QUESTIONS.

09:45AM 11 BUT I JUST WANT TO AVOID JUROR CONFUSION.

09:45AM 12 AND THIS IS AN ISSUE WHERE BOTH OF YOU HAVE THE SAME  
09:45AM 13 THING. I THINK YOU RECEIVED A COPY, YOUR TEAM DID, FROM THE  
09:45AM 14 GOVERNMENT.

09:45AM 15 IS THAT IMPORTANT TO NOTE, OR IS IT IMPORTANT TO NOTE THAT  
09:45AM 16 YOU BOTH HAVE THE SAME THING? I DON'T KNOW.

09:45AM 17 MR. BRECHER: I'M HAPPY TO MAKE CLEAR WITH  
09:45AM 18 MR. SONNIER HIS UNDERSTANDING THAT IT'S THE SAME THING.

09:45AM 19 I MEAN, TO RESOLVE MR. BOSTIC'S CONCERN, OR AT LEAST  
09:45AM 20 ADDRESS IT, I WON'T PRESUME TO RESOLVE IT, BUT I THINK UNDER  
09:46AM 21 RULE 703, ESPECIALLY GIVEN THAT THESE ARE UNDISPUTED FACTS, OR  
09:46AM 22 AT LEAST THESE ASPECTS OF THEM ARE UNDISPUTED, I THINK THAT  
09:46AM 23 THAT WILL PROVIDE THE CONTEXT NECESSARY TO HELP THE JURORS.

09:46AM 24 THE COURT: OKAY.

09:46AM 25 MR. BRECHER: MY REAL GOAL WAS TO GET PAST THIS

09:46AM 1 STAGE AND THEN TALK ABOUT SO WHAT HAPPENED -- WHAT DO WE DO  
09:46AM 2 NEXT?

09:46AM 3 THE COURT: OKAY. ALL RIGHT.  
09:46AM 4 ANYTHING FURTHER?

09:46AM 5 MR. BOSTIC: NO, YOUR HONOR.

09:46AM 6 MR. BRECHER: NO, YOUR HONOR.

09:46AM 7 THE COURT: ALL RIGHT. THANK YOU THEN.

09:46AM 8 JUST TO CLARIFY, THIS WILL BE ADMITTED, NOT FOR THE TRUTH  
09:46AM 9 OF THE MATTER ASSERTED, BUT ONLY AS TO THE ISSUE OF NOTICE.  
09:46AM 10 AND WHEN I SAY "THIS" I MEAN 20832.

09:46AM 11 MR. BRECHER: THANK YOU, YOUR HONOR.

09:46AM 12 THE COURT: AND YOU CAN IDENTIFY THE NOTICE ISSUE  
09:46AM 13 SUCH THAT I CAN INFORM THE JURY ON THAT.

09:46AM 14 AND THE OTHER TOPICS WE HAVE TALKED ABOUT IN REGARDS TO  
09:46AM 15 1475 I'LL DEFER UNTIL WE HAVE A BREAK, AND THEN WE'LL COME BACK  
09:47AM 16 AND DEAL WITH THOSE.

09:47AM 17 GO AHEAD, MR. BOSTIC.

09:47AM 18 MR. BOSTIC: APOLOGIES, YOUR HONOR.

09:47AM 19 ONE ISSUE THAT WE SHOULD FRONT FOR THE COURT. THE EXHIBIT  
09:47AM 20 THAT MR. BRECHER MENTIONED HE MIGHT WANT TO PUBLISH TO THE JURY  
09:47AM 21 WAS ACTUALLY THE GOVERNMENT'S BRADY LETTER, WHICH THE COURT --  
09:47AM 22 OR A PORTION OF THE GOVERNMENT'S BRADY LETTER.

09:47AM 23 AM I WRONG ABOUT THAT?

09:47AM 24 MR. BRECHER: IF THAT WAS THE NUMBER I LISTED, THEN  
09:47AM 25 THAT WAS A MISTAKE. NO.

09:47AM 1 IT'S A DIAGRAM OF THE LIS SYSTEM, A TWO-PAGE DIAGRAM.

09:47AM 2 I'M HAPPY TO CLARIFY THAT WITH MR. BOSTIC OFF THE RECORD.

09:47AM 3 MR. BOSTIC: THAT'S A MISUNDERSTANDING. IT MIGHT

09:47AM 4 HAVE BEEN MY FAULT.

09:47AM 5 THEN NOTHING FURTHER WE NEED TO --

09:47AM 6 THE COURT: ALL RIGHT. I DO WANT TO TALK ABOUT A

09:47AM 7 JURY ISSUE, AND WE'LL TAKE THIS UP WHEN THE JURY COMES OUT.

09:47AM 8 BUT JUST FOR YOUR INFORMATION, THE COURT HAS AND INTENDS

09:47AM 9 TO EXCUSE JUROR NUMBER 5, JUROR NUMBER 5, AND REPLACE JUROR

09:48AM 10 NUMBER 5 WITH ALTERNATE JUROR NUMBER 4.

09:48AM 11 THE COURT IS DOING THIS RECOGNIZING SOME HEALTH CONCERNS.

09:48AM 12 ANY COMMENT ON THAT, MR. BOSTIC?

09:48AM 13 MR. BOSTIC: NO OBJECTION, YOUR HONOR.

09:48AM 14 MR. COOPERSMITH: WE HAVE NO OBJECTION, YOUR HONOR.

09:48AM 15 THE COURT: ALL RIGHT. THANK YOU. WE'LL DO THAT

09:48AM 16 WHEN THE JURY COMES OUT.

09:48AM 17 MR. BOSTIC: THANK YOU, YOUR HONOR.

09:48AM 18 THE COURT: MR. BRECHER, SOMETHING ELSE?

09:48AM 19 MR. BRECHER: NO, NOTHING FURTHER.

09:48AM 20 I WAS GOING TO CONFER WITH MR. BOSTIC OFF THE RECORD.

09:48AM 21 THE COURT: OKAY. ANYTHING ELSE THEN BEFORE WE TAKE

09:48AM 22 OUR BREAK?

09:48AM 23 MR. COOPERSMITH: NO, YOUR HONOR. WE JUST NEED

09:48AM 24 ABOUT FIVE MINUTES.

09:48AM 25 THE COURT: YES. OF COURSE.

09:48AM 1 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:48AM 2 (RECESS FROM 9:48 A.M. UNTIL 10:04 A.M.)

10:04AM 3 (JURY IN AT 10:04 A.M.)

10:04AM 4 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. WE  
10:04AM 5 ARE BACK ON THE RECORD IN THE BALWANI CASE.

10:04AM 6 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

10:04AM 7 OUR JURORS ARE PRESENT.

10:04AM 8 GOOD MORNING, LADIES AND GENTLEMEN. IT'S NICE TO SEE YOU  
10:04AM 9 ALL AGAIN.

10:04AM 10 LET ME FIRST INDICATE ON THE RECORD, WE DID, AFTER  
10:05AM 11 CONSULTING WITH COUNSEL, THE COURT DID EXCUSE JUROR NUMBER 5,  
10:05AM 12 JUROR NUMBER 5 WAS EXCUSED, AND THAT MEANS THAT ALTERNATE  
10:05AM 13 NUMBER 4 IS MOVED INTO OUR JURY. THANK YOU.

10:05AM 14 WELCOME. I'M SURE A CELEBRATION AND WELCOMING PARTY WILL  
10:05AM 15 BE HELD LATER, AND WE'LL SCHEDULE THAT LATER SOME TIME.

10:05AM 16 BUT IT'S GOOD TO SEE YOU ALL AGAIN.

10:05AM 17 LET ME ASK YOU, DURING THE LONG BREAK THAT WE HAD, AND I  
10:05AM 18 APPRECIATE THAT, LET ME ASK YOU, DURING THAT BREAK, HAVE ANY OF  
10:05AM 19 YOU, DID ANY OF YOU HAVE ANY OCCASION TO LEARN ANYTHING ABOUT  
10:05AM 20 THIS CASE, TO DO ANY INVESTIGATION, TO HAVE DISCUSSIONS WITH  
10:05AM 21 ANYONE ABOUT THIS CASE, TO SEE ANYTHING, HEAR ANYTHING, READ  
10:05AM 22 ANYTHING TO DO WITH THIS CASE OUTSIDE OF THE COURTROOM?

10:05AM 23 IF SO, WOULD YOU PLEASE RAISE YOUR HAND, I'D BE GRATEFUL.

10:05AM 24 I SEE NO HANDS.

10:06AM 25 THANK YOU AGAIN FOR YOUR FIDELITY TO THE COURT'S

10:06AM 1 ADMONITION. ALL OF US ARE APPRECIATIVE OF THAT FACT, AND I  
10:06AM 2 RECOGNIZE IT'S DIFFICULT TO DO, AND WE'RE GRATEFUL.

10:06AM 3 IT'S NICE TO SEE YOU ALL AGAIN.

10:06AM 4 I'M ABOUT TO ASK THE DEFENSE IF THEY HAVE A WITNESS TO  
10:06AM 5 CALL.

10:06AM 6 MR. BRECHER: WE DO, YOUR HONOR.

10:06AM 7 THE DEFENSE CALLS RICHARD SONNIER.

10:06AM 8 THE COURT: ALL RIGHT. SIR, IF YOU COULD COME  
10:06AM 9 FORWARD AND STAND OVER HERE AND FACE OUR COURTROOM DEPUTY AND  
10:06AM 10 RAISE YOUR RIGHT HAND, SHE HAS A QUESTION FOR YOU.

10:06AM 11 **(DEFENDANT'S WITNESS, RICHARD SONNIER, WAS SWORN.)**

10:06AM 12 THE WITNESS: YES.

10:07AM 13 THE COURT: SIR, LET ME INVITE YOU TO HAVE A SEAT UP  
10:07AM 14 HERE AND MAKE YOURSELF COMFORTABLE.

10:07AM 15 FEEL FREE TO ADJUST THE CHAIR AND MICROPHONE AS YOU NEED.

10:07AM 16 THERE'S SOME WATER THERE THAT YOU CAN USE TO REFRESH  
10:07AM 17 YOURSELF SHOULD YOU NEED IT.

10:07AM 18 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME  
10:07AM 19 AND THEN SPELL IT, PLEASE.

10:07AM 20 THE WITNESS: YES. MY NAME IS RICHARD SONNIER. THE  
10:07AM 21 LAST NAME IS SPELLED S-O-N-N-I-E-R.

10:07AM 22 THE COURT: THANK YOU. AND RICHARD IS THE CLASSIC  
10:07AM 23 SPELLING?

10:07AM 24 THE WITNESS: YES, STANDARD SPELLING FOR RICHARD.

10:07AM 25 THE COURT: ALL RIGHT. THANK YOU.

10:07AM 1 COUNSEL.

10:07AM 2 MR. BRECHER: THANK YOU, YOUR HONOR.

10:07AM 3 **DIRECT EXAMINATION**

10:07AM 4 BY MR. BRECHER:

10:07AM 5 Q. GOOD MORNING, MR. SONNIER. THANK YOU FOR BEING HERE WITH  
10:07AM 6 US TODAY.

10:07AM 7 A. YES.

10:07AM 8 Q. MR. SONNIER, IF YOU ARE FULLY VACCINATED AND FEELING  
10:07AM 9 COMFORTABLE, YOU CAN REMOVE YOUR MASK DURING THE TESTIMONY.

10:07AM 10 A. OKAY. THANK YOU.

10:08AM 11 Q. AND I THINK I'LL DO THE SAME.

10:08AM 12 YOUR HONOR, MAY I APPROACH THE COURT AND THE WITNESS?

10:08AM 13 THE COURT: YES.

10:08AM 14 MR. BRECHER: (HANDING.)

10:08AM 15 Q. GOOD MORNING AGAIN, MR. SONNIER. YOU AND I HAVE MET  
10:08AM 16 BEFORE, BUT FOR THE RECORD, MY NAME IS AARON BRECHER AND I'M AN  
10:08AM 17 ATTORNEY FOR SUNNY BALWANI. I'D LIKE TO ASK YOU SOME QUESTIONS  
10:08AM 18 TODAY.

10:08AM 19 LET'S START WITH, MR. SONNIER, WHAT DO YOU DO FOR A  
10:08AM 20 LIVING, SIR?

10:08AM 21 A. I'M AN I.T. CONSULTANT.

10:08AM 22 Q. AND WHO IS YOUR EMPLOYER?

10:08AM 23 A. IT'S MY OWN COMPANY, IT'S NAMED NIMBLE SERVICES  
10:08AM 24 INCORPORATED.

10:08AM 25 Q. OKAY. AND, MR. SONNIER, WERE YOU RETAINED BY THE DEFENSE

10:08AM 1 IN THIS CASE?

10:08AM 2 A. YES, I WAS.

10:08AM 3 Q. OKAY. WE'LL TALK ABOUT THAT A BIT MORE IN A MINUTE, BUT  
10:08AM 4 VERY BRIEFLY, WHAT WERE YOU HIRED TO DO, SIR?

10:08AM 5 A. I WAS HIRED TO LOOK INTO THE FEASIBILITY OF RECOVERING THE  
10:09AM 6 LIS DATABASE.

10:09AM 7 Q. OKAY. AND YOU UNDERSTAND THAT TO BE THE THERANOS  
10:09AM 8 LABORATORY INFORMATION DATABASE?

10:09AM 9 A. YES, THAT'S MY UNDERSTANDING.

10:09AM 10 Q. OKAY. AND LET'S BACK UP A LITTLE BIT.

10:09AM 11 COULD YOU BRIEFLY DESCRIBE FOR THE JURY YOUR EDUCATIONAL  
10:09AM 12 BACKGROUND, SIR?

10:09AM 13 A. I HAVE BACHELORS OF SCIENCE DEGREES IN COMPUTER SCIENCE,  
10:09AM 14 AND A SECOND INDEPENDENT ONE IN PHYSICS.

10:09AM 15 I ALSO HAVE A -- WHAT IS CALLED A MINI MBA, IT'S A MASTERS  
10:09AM 16 IN BUSINESS ADMINISTRATION, OR A CERTIFICATE IN THAT.

10:09AM 17 AND I'VE ALSO ATTENDED GRAD SCHOOL IN COMPUTER SCIENCE.

10:09AM 18 Q. WHAT SORT OF COURSE WORK AT THE GRADUAL LEVEL, SIR?

10:09AM 19 A. RELATIONSHIP DATABASE, AND I CAN'T REMEMBER THE OTHER ONES  
10:09AM 20 RIGHT NOW.

10:09AM 21 Q. FAIR ENOUGH.

10:09AM 22 MR. SONNIER, CAN YOU BRIEFLY DESCRIBE YOUR PROFESSIONAL  
10:09AM 23 BACKGROUND FOR THE JURY?

10:09AM 24 A. YES. I STARTED MY CAREER AT LITTON INDUSTRIES WHERE I WAS  
10:10AM 25 THE SOLE I.T. SUPPORT FOR A NAVAL PROJECT TO BUILD A LARGE

10:10AM 1 DATABASE OF SHIP INFORMATION, NAVY SHIP INFORMATION.

10:10AM 2 AND I ENDED MY CAREER AT LITTON AS A DB2, DATABASE

10:10AM 3 ADMINISTRATOR, JUST EXACTLY THOSE LETTERS AND NUMBERS, DATABASE

10:10AM 4 ADMINISTRATOR.

10:10AM 5 AND THEN FROM THERE I MOVED ON TO WORK AT -- AS A

10:10AM 6 CONTRACTOR AT EXXON, IT WAS EXXON BACK THEN, NOW EXXON MOBILE.

10:10AM 7 FROM EXXON I JOINED A STARTUP COMPANY NAMED PARANET, AND

10:10AM 8 THAT'S WHEN I STARTED DOING, REALLY, I.T. CONSULTING FULL TIME.

10:10AM 9 I DID ALL KINDS OF PROJECTS AT PARANET, AND LEFT PARANET WITH

10:10AM 10 ANOTHER GENTLEMAN AND WE FORMED OUR OWN I.T. CONSULTING FIRM,

10:11AM 11 AND THEN FROM THAT FIRM WE SPLIT THAT FIRM UP AND MY HALF

10:11AM 12 BECAME NIMBLE SERVICES.

10:11AM 13 Q. I SEE. AND, MR. SONNIER, THERE'S ONE ASPECT OF THAT I

10:11AM 14 DIDN'T HEAR YOU DESCRIBE.

10:11AM 15 WHAT DID YOU DO WHEN YOU WERE WORKING AT EXXON, SIR?

10:11AM 16 A. I DID ALL KINDS OF PROJECTS FOR EXXON, INCLUDING BACKUP

10:11AM 17 SYSTEMS, BACKUP, RESTORE, SECURITY ANALYSIS. I DESIGNED A

10:11AM 18 HIGHLY SECURE REPLACEMENT NETWORK FOR THEIR GEOPHYSICAL

10:11AM 19 ENVIRONMENT, AS WELL AS OTHER ASPECTS OF ENCRYPTION AND

10:11AM 20 SECURITY OF THEIR DATABASES, AND BACKUPS OF THEIR DATA IN

10:11AM 21 GENERAL.

10:11AM 22 Q. AND, MR. SONNIER, ALL TOGETHER, HOW LONG HAVE YOU WORKED

10:11AM 23 IN THE I.T. FIELD?

10:11AM 24 A. OVER 35 YEARS.

10:11AM 25 Q. AND YOU MENTIONED BACKUPS. DID I HEAR THAT RIGHT, SIR?

10:11AM 1 A. YES, THAT'S RIGHT.

10:11AM 2 Q. SO COULD YOU BRIEFLY TELL THE JURY WHAT EXPERIENCE, IF  
10:11AM 3 ANY, YOU HAVE WITH DATA RECOVERY?

10:12AM 4 A. YES. SO THE POINT OF ANY BACKUP SYSTEM -- AND I'VE  
10:12AM 5 DONE -- BACKUP HAS ALWAYS BEEN PART OF MY JOB RESPONSIBILITY MY  
10:12AM 6 WHOLE CAREER -- IS, IN FACT, RECOVERY, UP TO AND INCLUDING  
10:12AM 7 RECOVERY IN A DISASTER SITUATION WHERE THE ORIGINAL EQUIPMENT  
10:12AM 8 MAY HAVE BEEN DESTROYED, SAY, FOR EXAMPLE, IN AN EARTHQUAKE AND  
10:12AM 9 YOU NEED TO GET REPLACEMENT EQUIPMENT AND THEN RESTORE ALL OF  
10:12AM 10 THE DATA BACK TO THAT REPLACEMENT EQUIPMENT AND RECOVER THE  
10:12AM 11 PRODUCTION SYSTEM.

10:12AM 12 Q. THANK YOU, MR. SONNIER.

10:12AM 13 YOU USED ANOTHER WORD EARLIER, ENCRYPTION. AT A HIGH  
10:12AM 14 LEVEL, SIR, COULD YOU TELL THE JURY WHAT THAT IS AND WHAT YOUR  
10:12AM 15 EXPERIENCE WITH IT IS?

10:12AM 16 A. YEAH, CERTAINLY.

10:12AM 17 SO ENCRYPTION MERELY MEANS TAKING SOME SORT OF INFORMATION  
10:12AM 18 THAT IS TOTALLY READABLE, INTELLIGIBLE, YOU CAN JUST LOOK AT IT  
10:12AM 19 AND SEE WHAT IT MEANS, AND RENDERING IT UNINTELLIGIBLE USING A  
10:12AM 20 KEY. YOU HAVE SOME SORT OF KEY, OR PERHAPS IT'S CALLED  
10:12AM 21 PASSWORD, THAT YOU APPLY AN ALGORITHM OR PROCEDURE TO THAT  
10:13AM 22 READABLE DATA AND MAKE IT UNREADABLE, OR AT LEAST OBFUSCATE IT  
10:13AM 23 TO THE POINT WHERE, WHEN YOU LOOK AT IT, IT DOESN'T MAKE ANY  
10:13AM 24 SENSE COMPARED TO THE ORIGINAL FORM.

10:13AM 25 Q. AND HOW MUCH EXPERIENCE DO YOU HAVE WITH DATA ENCRYPTION,

10:13AM 1

SIR?

10:13AM 2

A. YEAH, I'VE DONE ENCRYPTION AND DATA ENCRYPTION MY ENTIRE

10:13AM 3

CAREER.

10:13AM 4

Q. AND WHAT ABOUT DATA RECOVERY THAT WE TALKED ABOUT A MOMENT

10:13AM 5

AGO, HOW MUCH EXPERIENCE WITH THAT?

10:13AM 6

A. YEAH, I DO ROUTINELY RECOVER DATA FOR OUR CLIENTS EVERY

10:13AM 7

YEAR.

10:13AM 8

Q. OKAY. AND, MR. SONNIER, DOES THE TERM "SQL" MEAN ANYTHING

10:13AM 9

TO YOU?

10:13AM 10

A. YES. SQL IS AN ACRONYM FOR STRUCTURE QUERY LANGUAGE, BUT

10:13AM 11

IN PRACTICE IT REFERS TO A TYPE OF DATABASE.

10:13AM 12

Q. OKAY. AND WOULD I BE CORRECT IF I CALLED OR PRONOUNCED IT

10:13AM 13

SQL?

10:13AM 14

A. YES. THE ACRONYM IS OFTEN PRONOUNCED SQL.

10:13AM 15

Q. OKAY. AND YOU SAID IT'S A TYPE OF -- IT'S OFTEN A TYPE OF

10:14AM 16

DATABASE. CAN YOU EXPLAIN A LITTLE BIT MORE ABOUT WHAT THAT

10:14AM 17

MEANS?

10:14AM 18

A. RIGHT. SO THERE -- BEFORE SQL WAS INVENTED AT I.B.M.,

10:14AM 19

THERE WERE MANY DIFFERENT TYPES OF DATABASES, THERE STILL ARE,

10:14AM 20

BUT IT BECAME THE DOMINANT ONE AFTER ITS INVENTION AT I.B.M.

10:14AM 21

OVER THE YEARS.

10:14AM 22

SO IT STORES THE DATA INSIDE OF ITSELF AS TABLES OF

10:14AM 23

INFORMATION, ORGANIZED IN ROWS AND COLUMNS, SIMILAR TO AN EXCEL

10:14AM 24

SPREADSHEET, ALTHOUGH YOU CAN HAVE LOTS AND LOTS OF TABLES.

10:14AM 25

AND IT ALSO KNOWS THE RELATIONSHIP BETWEEN THOSE DATA ITEMS IN

10:14AM 1 THOSE TABLES.

10:14AM 2 Q. AND WHAT KIND OF EXPERIENCE DO YOU HAVE WORKING WITH SQL

10:14AM 3 DATABASES, SIR?

10:14AM 4 A. YES. I'VE WORKED WITH SQL DATABASES MY WHOLE CAREER.

10:14AM 5 Q. IS THERE ALSO A PROPRIETARY SOFTWARE MADE BY MICROSOFT

10:15AM 6 THAT GOES BY THAT NAME?

10:15AM 7 A. YES.

10:15AM 8 Q. AND CAN YOU EXPLAIN WHAT THAT IS FOR THE JURY?

10:15AM 9 A. SURE. SO SQL IS A CONCEPT IN THE I.T. INDUSTRY AND

10:15AM 10 DIFFERENT VENDORS MAKE DIFFERENT IMPLEMENTATIONS OF IT.

10:15AM 11 MICROSOFT'S IMPLEMENTATION IS IN FACT CALLED SQL SERVER,

10:15AM 12 OR YOU COULD PRONOUNCE IT SQL SERVER.

10:15AM 13 Q. AND, MR. SONNIER, DO YOU HAVE ANY PRIOR EXPERIENCE BEING

10:15AM 14 RETAINED BY A CRIMINAL DEFENDANT?

10:15AM 15 THE COURT: LET'S TAKE A BRIEF RECESS FOR JUST A

10:15AM 16 MOMENT.

10:16AM 17 LET'S TAKE A RECESS FOR A FEW MINUTES, LADIES AND

10:16AM 18 GENTLEMEN. THANK YOU.

10:16AM 19 YOU CAN STAND DOWN IF YOU WISH, SIR.

10:23AM 20 (RECESS FROM 10:16 A.M. UNTIL 10:35 A.M.)

10:35AM 21 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

10:35AM 22 ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.

10:35AM 23 MR. BRECHER, WOULD YOU LIKE TO CONTINUE?

10:35AM 24 MR. BRECHER: YES. THANK YOU, YOUR HONOR.

10:35AM 25 Q. THANK YOU, MR. SONNIER. YOU CAN REMOVE YOUR MASK AGAIN,

10:36AM 1 SIR.

10:36AM 2 MR. SONNIER, WHEN WE LEFT OFF I WAS ASKING YOU ABOUT YOUR  
10:36AM 3 EXPERIENCE WITH SQL DATABASES AND MICROSOFT SQL SERVERS.

10:36AM 4 DO YOU REMEMBER THAT, SIR?

10:36AM 5 A. YES.

10:36AM 6 Q. COULD YOU SAY A LITTLE BIT MORE ABOUT YOUR PAST WORK WITH  
10:36AM 7 THOSE PRODUCTS?

10:36AM 8 A. RIGHT. SO I'VE DONE LOTS OF WORK WITH ALL MANNER OF SQL  
10:36AM 9 SERVERS SYSTEMS, BUT IN PARTICULAR MICROSOFT SQL SERVER, I USE  
10:36AM 10 THAT DAILY ALL OF THE TIME. SO --

10:36AM 11 Q. AND FOR HOW LONG HAVE YOU USED IT DAILY ALL OF THE TIME,  
10:36AM 12 SIR?

10:36AM 13 A. TWENTY YEARS.

10:36AM 14 Q. AND, MR. SONNIER, DO YOU HAVE ANY PRIOR EXPERIENCE BEING  
10:36AM 15 RETAINED BY A DEFENDANT IN A CRIMINAL CASE?

10:36AM 16 A. NO.

10:36AM 17 Q. NO. ABOUT WHAT OTHER PRIOR EXPERIENCE WITH LEGAL  
10:36AM 18 PROCEEDINGS?

10:36AM 19 A. YES. I AM RETAINED IN SEVERAL, OR MANY, CIVIL MATTERS.

10:37AM 20 Q. AND, MR. SONNIER, ARE YOU BEING COMPENSATED FOR YOUR TIME  
10:37AM 21 TODAY AND FOR YOUR WORK IN THIS CASE?

10:37AM 22 A. YES, I AM.

10:37AM 23 Q. HOW MUCH, SIR?

10:37AM 24 A. MY TIME IS BILLED AT \$300 AN HOUR. I GET -- ABOUT HALF OF  
10:37AM 25 THAT SORT OF COMES TO ME AS MY COMPENSATION.

10:37AM 1 Q. OKAY. AND DOES YOUR COMPENSATION TURN IN ANY WAY ON THE  
10:37AM 2 SUBSTANCE OF THE OPINIONS YOU OFFER TODAY?  
10:37AM 3 A. NO, IT DOES NOT.  
10:37AM 4 Q. DOES YOUR COMPENSATION DEPEND IN ANY WAY ON THE OUTCOME OF  
10:37AM 5 THIS TRIAL?  
10:37AM 6 A. NO, IT DOES NOT.  
10:37AM 7 Q. AND DOES YOUR COMPENSATION IN ANY WAY AFFECT THE OPINIONS  
10:37AM 8 THAT YOU'VE REACHED IN THIS CASE?  
10:37AM 9 A. NO.  
10:37AM 10 MR. BRECHER: YOUR HONOR, THE DEFENSE OFFERS  
10:37AM 11 MR. SONNIER AS AN EXPERT IN SQL DATA RECOVERY AND DATA  
10:37AM 12 ENCRYPTION.  
10:37AM 13 MR. BOSTIC: NO OBJECTION.  
10:37AM 14 THE COURT: ALL RIGHT. THANK YOU.  
10:37AM 15 LADIES AND GENTLEMEN, THIS WITNESS WILL BE PERMITTED TO  
10:38AM 16 TESTIFY AS AN EXPERT IN THE AREA OF SQL DATA RECOVERY AND DATA  
10:38AM 17 ENCRYPTION.  
10:38AM 18 YOU WILL BE INSTRUCTED IN THE FINAL INSTRUCTIONS HOW YOU  
10:38AM 19 MAY CHARACTERIZE AND EVALUATE THIS TESTIMONY.  
10:38AM 20 COUNSEL.  
10:38AM 21 MR. BRECHER: THANK YOU, YOUR HONOR.  
10:38AM 22 Q. SO, MR. SONNIER, LET'S TURN TO THE SUBSTANCE A BIT MORE.  
10:38AM 23 AND WE'RE TALKING ABOUT THE THERANOS LABORATORY  
10:38AM 24 INFORMATION SYSTEM.  
10:38AM 25 DID YOU SAY THAT EARLIER?

10:38AM 1

A. YES.

10:38AM 2

Q. AND JUST TO MAKE CLEAR, ARE YOU A LABORATORY SCIENTIST BY TRAINING?

10:38AM 3

10:38AM 4

A. NO.

10:38AM 5

Q. ARE YOU A MEDICAL DOCTOR?

10:38AM 6

A. NO, I'M NOT.

10:38AM 7

Q. DO YOU HAVE ANY PRIOR EXPERIENCE WITH BLOOD TESTING OR BLOOD TESTING TECHNOLOGY?

10:38AM 8

10:38AM 9

A. NO. ONLY AS I'VE HAD A BLOOD TEST MYSELF.

10:38AM 10

Q. OKAY. FAIR ENOUGH.

10:38AM 11

MR. SONNIER, DO YOU HAVE ANY KNOWLEDGE ABOUT THE CONTENT OF THE THERANOS LIS OR WHAT IT WOULD SHOW?

10:38AM 12

10:38AM 13

A. THERE WERE SOME MATERIALS THAT I REVIEWED, LIKE IT WAS THE USER'S GUIDE FOR THAT SYSTEM, SO I KNOW SORT OF SOME OF THE INFORMATION THAT WAS DOCUMENTED THERE.

10:39AM 15

10:39AM 16

Q. OKAY. BUT YOU DON'T KNOW ANYTHING, FOR INSTANCE, ABOUT PATIENT TESTING RESULTS OR ANYTHING LIKE THAT?

10:39AM 17

10:39AM 18

A. NO.

10:39AM 19

Q. OKAY. AND DO THE OPINIONS THAT YOU FORMED IN THIS CASE TURN ON THAT INFORMATION?

10:39AM 20

10:39AM 21

A. NO, THEY DO NOT.

10:39AM 22

Q. OKAY. SO I GUESS, AND I THINK I ASKED YOU THIS EARLIER, BUT WHAT WERE YOU ASKED TO EXAMINE?

10:39AM 23

10:39AM 24

A. I WAS ASKED TO LOOK AT THE FEASIBILITY OF THE RECOVERY OF THE LIS DATA.

10:39AM 25

10:39AM 1 Q. OKAY. AND I THINK YOU'VE TOUCHED ON THIS, BUT WHAT SORT  
10:39AM 2 OF MATERIALS DID YOU REVIEW TO FORM YOUR OPINIONS IN THIS CASE?

10:39AM 3 A. THERE WERE A WHOLE SERIES OF INFORMATION, SOME LEGAL  
10:39AM 4 FILINGS, SOME DEPOSITIONS, FBI INTERVIEW, SUMMARIES.

10:39AM 5 PREVIOUSLY I MENTIONED SOME SORT OF LIS USER  
10:40AM 6 DOCUMENTATION.

10:40AM 7 I THINK THERE WERE SOME THERANOS POLICY AND PROCEDURES  
10:40AM 8 SORT OF STANDARDS DOCUMENTS, EMAILS, THE LEASE AGREEMENT, AND  
10:40AM 9 THEN SOME PUBLIC INFORMATION THAT'S JUST AVAILABLE ON THE  
10:40AM 10 INTERNET.

10:40AM 11 Q. OKAY. AND, MR. SONNIER, ARE THESE THE SORTS OF MATERIALS  
10:40AM 12 THAT YOU TYPICALLY RELY ON IN YOUR WORK?

10:40AM 13 A. IT'S VERY COMMON, DOING WHAT I DO, TO RECEIVE A BUNCH OF  
10:40AM 14 INFORMATION, WRITTEN EMAILS, TRANSCRIPTS, DOCUMENTATION, AND  
10:40AM 15 THEN TO PUT TOGETHER HOW TO SOLVE THE PROBLEM AT HAND.

10:40AM 16 Q. AND, MR. SONNIER, WE'VE TALKED ABOUT SOME OF THE THINGS  
10:40AM 17 THAT YOU'RE NOT HERE TO DISCUSS, THE CONTENT OF ANY PATIENT  
10:40AM 18 TESTING DATA.

10:40AM 19 BUT LET'S TURN TO A LITTLE BIT ABOUT THE TECHNICAL ASPECTS  
10:40AM 20 OF THE LIS SYSTEM.

10:40AM 21 CAN YOU BREAK DOWN SOME TERMS FOR ME? DO YOU HAVE AN  
10:40AM 22 UNDERSTANDING OF THE TERM "LIS SYSTEM" FROM A TECHNICAL  
10:41AM 23 PERSPECTIVE BASED ON THE MATERIALS THAT YOU'VE REVIEWED?

10:41AM 24 MR. BOSTIC: OBJECTION. FOUNDATION. CALLS FOR  
10:41AM 25 HEARSAY.

10:41AM 1 THE COURT: WELL, LET ME -- YOU CAN ANSWER THE  
10:41AM 2 QUESTIONS FOR FOUNDATIONAL PURPOSES.

10:41AM 3 MR. BRECHER: THANK YOU, YOUR HONOR.

10:41AM 4 THE WITNESS: SO IN THE INFORMATION THAT I REVIEWED,  
10:41AM 5 THE LIS SYSTEM WAS PRETTY STANDARD. IT WAS COMPOSED OF THE  
10:41AM 6 DATABASE, THE LIS DATABASE, WHERE THE INFORMATION WAS ACTUALLY  
10:41AM 7 STORED, AND THEN PROGRAMS, IN THIS CASE IT'S DOT NET PROGRAMS,  
10:41AM 8 VERY STANDARD IN CORPORATE ENVIRONMENTS, AND A WEB SERVER THAT  
10:41AM 9 UTILIZED THOSE PROGRAMS TO READ AND WRITE THAT DATA INTO AND  
10:41AM 10 OUT OF THE DATABASE AND PRESENT IT TO THE USER.

10:41AM 11 BY MR. BRECHER:

10:41AM 12 Q. AND YOU HAVE A BINDER OF DOCUMENTS IN FRONT OF YOU. I  
10:41AM 13 THINK THAT SHOULD STILL BE THERE.

10:41AM 14 A. YES.

10:41AM 15 Q. COULD YOU TURN TO THE TAB MARKED 20005?

10:42AM 16 A. I'M THERE.

10:42AM 17 Q. THANK YOU. I'LL ASK YOU TO TURN TO PAGES 2 AND 3 OF THAT  
10:42AM 18 EXHIBIT. LET ME KNOW WHEN YOU'RE THERE.

10:42AM 19 A. I'M THERE.

10:42AM 20 Q. AND DO YOU SEE SOME IMAGES OR DIAGRAMS?

10:42AM 21 A. YES.

10:42AM 22 Q. AND DO THOSE IMAGES REFLECT THE STRUCTURE OF THE EQUIPMENT  
10:42AM 23 RELATED TO THE THERANOS LIS BASED ON THE MATERIALS THAT YOU  
10:42AM 24 REVIEWED?

10:42AM 25 A. YES, BASED ON THE MATERIAL THAT I REVIEWED, THIS IS A

10:42AM 1 DIAGRAM OF THE EQUIPMENT THAT RAN THE LIS SYSTEM.

10:42AM 2 Q. AND IS THIS DIAGRAM CONSISTENT WITH YOUR TRAINING AND  
10:42AM 3 EXPERIENCE ABOUT WHAT A SYSTEM OF THIS SORT WOULD LOOK LIKE?

10:42AM 4 A. YES, IT'S EXACTLY WHAT I WOULD HAVE EXPECTED.

10:42AM 5 MR. BRECHER: YOUR HONOR, I'D LIKE TO PUBLISH  
10:42AM 6 PAGES 2 AND 3 OF EXHIBIT 20005 FOR PURPOSES OF DEMONSTRATIVE  
10:42AM 7 PURPOSES ONLY.

10:42AM 8 MR. BOSTIC: FOUNDATION AND RELEVANCE, YOUR HONOR.

10:42AM 9 THE COURT: WHY DON'T YOU LAY A FOUNDATION FOR THIS  
10:43AM 10 A LITTLE BIT MORE?

10:43AM 11 MR. BRECHER: SURE.

10:43AM 12 THE COURT: NO, GO AHEAD.

10:43AM 13 MR. BRECHER: THANK YOU, YOUR HONOR.

10:43AM 14 Q. SO, MR. SONNIER, YOU TESTIFIED THAT YOU REVIEWED SOME  
10:43AM 15 LEASE AGREEMENTS; IS THAT RIGHT?

10:43AM 16 A. YES.

10:43AM 17 Q. AND YOU TESTIFIED THAT YOU REVIEWED INTERNAL  
10:43AM 18 CORRESPONDENCE. DID I HEAR THAT RIGHT?

10:43AM 19 A. YES, EMAILS.

10:43AM 20 Q. OKAY. AND THIS -- THESE DIAGRAMS YOU SAID ARE CONSISTENT  
10:43AM 21 WITH WHAT YOU WOULD EXPECT AN LIS SYSTEM -- EXCUSE ME, A SQL  
10:43AM 22 SERVER SYSTEM WOULD LOOK LIKE?

10:43AM 23 A. YES.

10:43AM 24 Q. WOULD IT BE HELPFUL FOR YOU, IN EXPLAINING THE CONSTITUENT  
10:43AM 25 PARTS OF THAT SYSTEM, TO POINT US TO IMAGES ON THIS DIAGRAM?

10:43AM 1 A. YES, PICTURES ARE ALWAYS GOOD.

10:43AM 2 MR. BRECHER: YOUR HONOR, I'D LIKE TO PUBLISH  
10:43AM 3 PAGES 2 AND 3, AGAIN, FOR DEMONSTRATIVE PURPOSES ONLY. WE  
10:43AM 4 WON'T BE OFFERING THIS INTO EVIDENCE.

10:43AM 5 THE COURT: MR. BOSTIC.

10:43AM 6 MR. BOSTIC: YOUR HONOR, IF THIS IS BEING OFFERED TO  
10:43AM 7 SHOW A GENERIC STRUCTURE OF THE SQL SYSTEM?

10:44AM 8 THE COURT: THAT WAS MY QUESTION.

10:44AM 9 IS THIS GOING TO BE A GENERIC DESCRIPTION OF THIS DATABASE  
10:44AM 10 OR THE CONFIGURATION, OR IS THIS -- ARE YOU SEEKING TO OFFER  
10:44AM 11 THIS OR EXPLAIN THAT THIS WAS THE ACTUAL CONFIGURATION AND  
10:44AM 12 ARCHITECTURE OF THERANOS?

10:44AM 13 MR. BRECHER: OF COURSE, YOUR HONOR. WHY DON'T I  
10:44AM 14 ASK SOME FOUNDATIONAL QUESTIONS?

10:44AM 15 THE COURT: SURE. RIGHT.

10:44AM 16 MR. BRECHER: AND WE CAN FIND OUT.

10:44AM 17 Q. MR. SONNIER, DO YOU UNDERSTAND -- WHAT DO YOU UNDERSTAND  
10:44AM 18 THESE DIAGRAMS TO BE, MORE SPECIFICALLY?

10:44AM 19 A. THESE DIAGRAMS ARE A SERIES OF NETWORK EQUIPMENT,  
10:44AM 20 FIREWALLS, LOAD BALANCERS, NETWORK SWITCHES -- I'M SORRY IF  
10:44AM 21 THOSE ARE ALL TECHNICAL TERMS -- AND THEN SEVERAL SERVERS. ONE  
10:44AM 22 IS A BACKUP SERVER, AND ONE WOULD BE THE SERVER ON WHICH THE  
10:44AM 23 LIS SYSTEM WOULD HAVE RUN.

10:44AM 24 Q. AND DID YOU LOOK TO OTHER MATERIALS BEYOND THIS DIAGRAM TO  
10:44AM 25 COME TO YOUR UNDERSTANDING OF THE STRUCTURE OF THE LIS SYSTEM?

10:45AM 1 A. DO YOU MEAN THE EQUIPMENT THAT WAS RUNNING IT?

10:45AM 2 Q. YES.

10:45AM 3 A. YES. SO I REVIEWED THE LEASE AGREEMENT THAT THERANOS HAD,  
10:45AM 4 AND IN THAT LEASE AGREEMENT, WHICH WAS WITH DELL CORPORATION,  
10:45AM 5 IT PROVIDES WHAT ARE CALLED SERVICE TAGS. THAT'S ESSENTIALLY A  
10:45AM 6 DELL SERIAL NUMBER, AND DELL IS VERY NICE, THEY PUBLISH THAT  
10:45AM 7 INFORMATION PUBLICLY ON THE INTERNET.

10:45AM 8 SO I WAS ABLE TO LOOK UP AND ESSENTIALLY GET A FULL  
10:45AM 9 INVENTORY OF ALL OF THE BITS AND PIECES THAT MADE UP THAT  
10:45AM 10 EQUIPMENT THAT WAS REPRESENTED IN THAT LEASE.

10:45AM 11 Q. AND IS THAT REVIEW CONSISTENT WITH THE DIAGRAMS THAT  
10:45AM 12 YOU'RE LOOKING AT IN EXHIBIT 20005?

10:45AM 13 A. YES.

10:45AM 14 MR. BRECHER: YOUR HONOR, I THINK UNDER 703, IT  
10:45AM 15 WOULD BE HELPFUL FOR US TO SEE A VISUAL REPRESENTATION.

10:45AM 16 MR. BOSTIC: YOUR HONOR, IF THIS IS MEANT TO  
10:45AM 17 REPRESENT THE ACTUAL LIS, THEN THE OBJECTION IS FOUNDATION,  
10:46AM 18 HEARSAY, AND BEST EVIDENCE.

10:46AM 19 THE COURT: IS THIS -- ARE YOU SUGGESTING AND  
10:46AM 20 OFFERING THIS TO BE THE ACTUAL ARCHITECTURE, THE SERVERS IN  
10:46AM 21 PLACE, OR IS THIS A REPRESENTATIVE OF OR SOMETHING IN BETWEEN?

10:46AM 22 MR. BRECHER: SOMETHING IN BETWEEN. BUT I'M MORE  
10:46AM 23 THAN HAPPY TO KEEP IT LIMITED TO A GENERIC REPRESENTATIVE OF.  
10:46AM 24 I JUST WANT TO MAKE SURE THAT WE CAN UNDERSTAND THE DIFFERENT  
10:46AM 25 PARTS.

10:46AM 1 THE COURT: OKAY. ALL RIGHT.

10:46AM 2 WITH THE UNDERSTANDING THAT THIS IS NOT AND YOU'RE NOT  
10:46AM 3 OFFERING THIS IN ANY WAY TO REPRESENT THE SPECIFIC ARCHITECTURE  
10:46AM 4 THAT EXISTED AT THE TIME, BUT RATHER REPRESENTATIVE OF THE  
10:46AM 5 ARCHITECTURE OF A SIMILAR TYPE, IS THAT ACCURATE?

10:46AM 6 MR. BRECHER: I THINK THAT'S FAIR, YOUR HONOR.

10:46AM 7 THE COURT: ALL RIGHT. THEN THESE CAN BE PUBLISHED.

10:46AM 8 LADIES AND GENTLEMEN, THESE WILL BE PUBLISHED, NOT  
10:46AM 9 ADMITTED AS EVIDENCE, BUT PUBLISHED AS A DEMONSTRATIVE TO  
10:46AM 10 ASSIST THE TESTIMONY OF THE WITNESS.

10:46AM 11 MR. BRECHER: THANK YOU, YOUR HONOR.

10:47AM 12 AND, MR. ALLEN, IF WE CAN PUT UP PAGES 2 AND 3 TOGETHER  
10:47AM 13 JUST SO WE CAN SEE THEIR RELATIONSHIP.

10:47AM 14 Q. MR. SONNIER, DO YOU HAVE THAT ON THE SCREEN IN FRONT OF  
10:47AM 15 YOU, SIR?

10:47AM 16 A. YES, I DO.

10:47AM 17 Q. IT'S ALSO IN YOUR BINDER IF THAT'S EASIER.

10:47AM 18 A. YES.

10:47AM 19 Q. DO YOU HAVE AN UNDERSTANDING OF THE RELATIONSHIP BETWEEN  
10:47AM 20 PAGE 2, THE IMAGE ON THE LEFT, AND PAGE 3, THE IMAGE ON THE  
10:47AM 21 RIGHT?

10:47AM 22 A. YES. THEY'RE JUST TWO DIAGRAMS OF THE SAME THING. THE  
10:47AM 23 LEFT -- THE IMAGE ON THE LEFT IS WHAT I WOULD CALL SORT OF A  
10:47AM 24 CONNECTION DIAGRAM SHOWING HOW THE PIECES ARE CONNECTED TO EACH  
10:47AM 25 OTHER AND KIND OF BLOWN OUT MAYBE MAKES IT A LITTLE EASIER TO

10:47AM 1 INSTRUCT THAT, WHEREAS THE ONE ON THE RIGHT IS A MORE PHYSICAL  
10:47AM 2 DIAGRAM OF HOW SUCH SAID EQUIPMENT WOULD BE STORED IN THE  
10:47AM 3 TYPICAL SERVER ROOM.

10:47AM 4 Q. AND THINKING ABOUT A TYPICAL SERVER ENVIRONMENT -- AND I'M  
10:48AM 5 NOW GOING TO ASK, MR. ALLEN, IF YOU COULD JUST FOCUS ON PAGE 2,  
10:48AM 6 PLEASE -- I SEE A SERIES OF THIN HORIZONTAL STRIPS IN THIS --  
10:48AM 7 WHAT DID YOU CALL IT? A BLOWN OUT VERSION?

10:48AM 8 A. YES. IT'S LIKE A CONNECTION DIAGRAM JUST SHOWING THE  
10:48AM 9 DIFFERENT PIECES, AND THE LITTLE LINES REPRESENT SORT OF HOW  
10:48AM 10 THEY'RE HOOKED TOGETHER.

10:48AM 11 Q. OKAY. AND DO YOU HAVE A SENSE OF WHAT THESE THIN  
10:48AM 12 HORIZONTAL STRIPS REPRESENT?

10:48AM 13 A. YES, THOSE ARE ALL VARIOUS ASPECTS OF THE NETWORK.

10:48AM 14 I CAN DETAIL A LITTLE BIT. THE TWO AT THE TOP ARE  
10:48AM 15 FIREWALLS; THE NEXT TWO SORT OF YELLOW ORANGE ONES ARE LOAD  
10:48AM 16 BALANCERS; THE NEXT FOUR THINNER BOXES ARE SWITCHES THAT ALLOW  
10:48AM 17 THE EQUIPMENT TO TALK TO EACH OTHER, AS WELL AS THE INTERNET  
10:48AM 18 AND THE WIDE WORLD.

10:48AM 19 Q. AND -- I'M SORRY, SIR. WERE YOU FINISHED?

10:48AM 20 A. NO. I DIDN'T KNOW IF YOU WANTED ME TO CONTINUE DOWN THE  
10:48AM 21 PAGE OR NOT.

10:48AM 22 Q. NO. WE'LL GET THERE STEP BY STEP. THANK YOU, SIR.

10:49AM 23 MR. SONNIER, THINKING ABOUT A TYPICAL MICROSOFT SQL SYSTEM  
10:49AM 24 ARCHITECTURE, THOSE THIN, I THINK YOU CALLED IT THEM NETWORK  
10:49AM 25 STRIPS THAT WE WERE JUST TALKING ABOUT, WERE THOSE IMPORTANT TO

10:49AM 1 UNDERSTAND IN FORMING YOUR OPINIONS ABOUT THE RECOVERABILITY OF  
10:49AM 2 THE LIS?

10:49AM 3 A. NO, THE NETWORK WOULDN'T HAVE HAD ANY IMPACT ON THE  
10:49AM 4 RECOVERABILITY.

10:49AM 5 Q. OKAY. I'M LOOKING STILL ON PAGE 2 ON THE TOP HALF, AND I  
10:49AM 6 SEE IN THE CENTER TWO LARGER STRIPS. THE FIRST ONE IS LABELLED  
10:49AM 7 DELL R520.

10:49AM 8 DO YOU SEE THAT, SIR?

10:49AM 9 A. YES.

10:49AM 10 Q. AGAIN, THINKING ABOUT THIS AS A GENERIC OR HOPEFULLY  
10:49AM 11 TYPICAL SQL SERVER ARCHITECTURE, WHAT IS THAT, SIR?

10:49AM 12 A. SO THAT'S A STANDARD DELL SERVER FOR THE TIME, VERY  
10:50AM 13 GENERIC, LOTS OF THEM IN THE WORLD.

10:50AM 14 AND THEN THE LARGER BOX UNDERNEATH IT IS ESSENTIALLY A  
10:50AM 15 DATA STORAGE DEVICE. IT'S A LOWER PERFORMANCE.

10:50AM 16 THESE TWO TOGETHER HAD THE FUNCTION -- OR IN THE MATERIALS  
10:50AM 17 I REVIEWED, THESE TWO WERE BASICALLY DESIGNATED AS THE BACKUP  
10:50AM 18 FOR THE SQL SYSTEM OR FOR THE LIS SYSTEM.

10:50AM 19 Q. OKAY. LET'S TURN DOWN TO THE BOTTOM OF PAGE 2. I'M  
10:50AM 20 SEEING ANOTHER TWO STRIPS HERE. ONE OF THEM IS LABELLED 5108  
10:50AM 21 UCS CHASSIS.

10:50AM 22 DO YOU SEE THAT, SIR?

10:50AM 23 A. YES, I DO.

10:50AM 24 Q. AND THE ONE BELOW THAT IS LABELLED NIMBLE CS300.

10:50AM 25 DO YOU SEE THAT, SIR?

10:50AM 1 A. YES, I DO.

10:50AM 2 Q. WHAT WOULD THOSE BE IN ARCHITECTURE LIKE THIS?

10:51AM 3 A. SO THE LARGER UNIT IS ESSENTIALLY A SERVER ARRAY. SO AS  
10:51AM 4 THE ONE ABOVE THAT WHOLE BOX WAS ONE SERVER, THIS IS REALLY A  
10:51AM 5 DENSER CONFIGURATION THAT ALLOWS YOU TO PUT SERVERS IN ONE BOX.  
10:51AM 6 IT ALLOWS YOU TO SAVE SPACE WHEN YOU'RE RENTING DATA CENTER  
10:51AM 7 SPACE BY THE FOOT, AND IN THAT ONE BOX YOU CAN PUT FOUR OR  
10:51AM 8 EIGHT SERVERS INTO IT.

10:51AM 9 Q. OKAY.

10:51AM 10 A. THE FINAL BOX AT THE VERY BOTTOM IS A HIGH PERFORMANCE  
10:51AM 11 DISK ARRAY THAT PROVIDES ALL OF THE STORAGE OF ALL OF THE  
10:51AM 12 SERVERS IN THE LARGER BOX.

10:51AM 13 Q. THANK YOU, MR. SONNIER.

10:51AM 14 AND THEN TURNING TO PAGE 3 OF THE EXHIBIT. COULD YOU  
10:51AM 15 EXPLAIN AGAIN TO US WHAT THIS IS?

10:51AM 16 A. YES. SO ALL OF THE BOXES WE JUST TALKED ABOUT IN THE  
10:52AM 17 CONNECTION DIAGRAM ARE ARRANGED TOP TO BOTTOM IN WHAT --  
10:52AM 18 ESSENTIALLY THIS IS A COMPUTER RACK IS WHAT WE CALL IT, OR A  
10:52AM 19 SERVER RACK.

10:52AM 20 SO IN AN ACTUAL DATA CENTER, ALL OF THAT EQUIPMENT WOULD  
10:52AM 21 BE MOUNTED INTO THIS RACK, WHICH IS THE LARGE GRAY BARS AROUND  
10:52AM 22 THE OUTSIDE OF THE DIAGRAM, AND EACH OF THE BOXES IS THEN  
10:52AM 23 BOLTED IN PLACE, AND THEN FROM THERE IT WOULD HAVE BEEN  
10:52AM 24 CONNECTED TO POWER AND THE NETWORK WOULD HAVE BEEN WIRED UP PER  
10:52AM 25 THE CONNECTION DIAGRAM.

10:52AM 1 Q. OKAY. AND, MR. SONNIER, I THINK WE MAY HAVE COVERED THIS,  
10:52AM 2 BUT BASED ON YOUR TRAINING AND EXPERIENCE, DOES THIS  
10:52AM 3 ARCHITECTURE LOOK LIKE WHAT ONE WOULD EXPECT A SQL SERVER  
10:52AM 4 SYSTEM OF THIS NATURE TO RESEMBLE?

10:52AM 5 A. YES, PRETTY STANDARD.

10:52AM 6 Q. MR. ALLEN, I THINK WE CAN TAKE THAT DOWN.

10:52AM 7 AND, MR. SONNIER, LET'S TALK A LITTLE BIT MORE ABOUT SQL,  
10:53AM 8 BECAUSE WHEN WE WERE SPEAKING EARLIER, I THINK I HEARD THE  
10:53AM 9 TERMS SQL FILE, SQL SERVER, SQL DATABASE, AND MICROSOFT SQL.  
10:53AM 10 SO WHY DON'T WE BREAK THOSE DOWN ONE BY ONE.

10:53AM 11 WHAT EXACTLY IS A SQL FILE?

10:53AM 12 A. SO ALL DATABASES HAVE TO STORE INFORMATION FOR  
10:53AM 13 PERMANENTLY, AND SO THEY WRITE IT INTO A FILE, SIMILAR TO A  
10:53AM 14 WORD DOCUMENT OR AN EXCEL DOCUMENT THAT YOU MIGHT HAVE ON YOUR  
10:53AM 15 PERSONAL COMPUTER. SO ALL SQL SYSTEMS HAVE TO ACTUALLY WRITE  
10:53AM 16 INTO A FILE.

10:53AM 17 SO THEY ALL STORE INTO FILES, AND SOMETIMES PEOPLE WILL  
10:53AM 18 REFER TO THE FILE AS THE DATABASE ITSELF, OR THEY MAY CALL IT  
10:53AM 19 JUST THE SQL FILE BECAUSE YOU MIGHT THINK OF THE DATABASE AS  
10:53AM 20 NOT JUST THE FILE, BUT ALSO THE SOFTWARE TO ACCESS THE FILE.

10:53AM 21 Q. OKAY. AND I THINK YOU MENTIONED A COUPLE OF OTHER TERMS  
10:54AM 22 THAT AT LEAST I AM A BIT MORE FAMILIAR WITH.

10:54AM 23 YOU SAID A WORD DOCUMENT, AND I THINK YOU SAID AN EXCEL  
10:54AM 24 DOCUMENT; IS THAT RIGHT?

10:54AM 25 A. YES.

10:54AM 1 Q. AND CAN WE COMPARE A LITTLE BIT IN TERMS OF FUNCTION? HOW  
10:54AM 2 DOES A SQL FILE COMPARE TO SOMETHING LIKE AN EXCEL FILE THAT WE  
10:54AM 3 MIGHT BE A LITTLE BIT MORE FAMILIAR WITH?

10:54AM 4 A. SURE. SO AN EXCEL FILE IS COMMONPLACE. IT'S A  
10:54AM 5 REPRESENTATION OF A SPREADSHEET GENERALLY USED FOR COMPUTING  
10:54AM 6 FORMULAS AND ACCOUNTING NUMBERS.

10:54AM 7 AND YOU HAVE THE SAME SORT OF THING FOR A DATABASE OR A  
10:54AM 8 SQL DATABASE. THE INFORMATION THAT REPRESENTS TABLES, ROWS AND  
10:54AM 9 COLUMNS, JUST LIKE IN AN EXCEL SPREADSHEET, ARE STORED IN THE  
10:54AM 10 SQL FILE OR THE SQL DATABASE, AND THEN YOU CAN USE THE SQL  
10:54AM 11 SOFTWARE TO RETRIEVE IT, JUST LIKE YOU CAN USE EXCEL TO OPEN UP  
10:55AM 12 THIS EXCEL FILE AND THEN DISPLAY THE ROWS AND COLUMNS IN AN  
10:55AM 13 EXCEL SPREADSHEET.

10:55AM 14 Q. WHAT SORT OF DIFFERENCES EXIST BETWEEN A SQL FILE AND AN  
10:55AM 15 EXCEL FILE, TO STICK WITH THAT ANALOGY?

10:55AM 16 A. SURE. SO A SQL FILE WOULD BE MORE LIMITED THAN A  
10:55AM 17 RELATIONAL DATABASE WOULD BE OR A SQL DATABASE WOULD BE. IT  
10:55AM 18 PROBABLY COULDN'T STORE ANYWHERE NEAR THE AMOUNT OF DATA.

10:55AM 19 Q. I'M SORRY, MR. SONNIER. I'M GOING TO PAUSE. I MAY HAVE  
10:55AM 20 MISHEARD YOU. DID YOU SAY THAT A SQL FILE WOULD BE MORE  
10:55AM 21 LIMITED THAN A SQL DATABASE, OR DID I MISHEAR YOU?

10:55AM 22 A. NO. AN EXCEL FILE WOULD BE MORE LIMITED THAN A SQL  
10:55AM 23 DATABASE.

10:55AM 24 Q. OKAY. THANK YOU.

10:55AM 25 MR. SONNIER, LET'S -- WE'LL FLESH THIS OUT IN A FEW

10:55AM 1 MOMENTS, BUT WE WERE TALKING A LOT ABOUT WHAT YOU WERE ASKED TO  
10:55AM 2 EXAMINE, AND AT A VERY HIGH LEVEL, WHAT DID YOU ULTIMATELY  
10:56AM 3 CONCLUDE ABOUT THE RECOVERABILITY OF THE THERANOS LABORATORY  
10:56AM 4 INFORMATION SYSTEM?

10:56AM 5 A. SO ULTIMATELY, AFTER REVIEWING ALL OF THE MATERIALS THAT I  
10:56AM 6 REVIEWED, I CONCLUDED THAT, CERTAINLY BEFORE AUGUST 2018, IT  
10:56AM 7 WOULD HAVE BEEN A VERY STRAIGHTFORWARD TECHNICAL TASK TO  
10:56AM 8 RECOVER THAT DATA, AND EVEN AFTER AUGUST 2018 IT WOULD BE THE  
10:56AM 9 SAME, YOU COULD STILL RECOVER THAT INFORMATION.

10:56AM 10 Q. AND YOU USED A DATE THERE, AUGUST OF 2018, AND I THINK  
10:56AM 11 WE'LL GET INTO WHY THAT DATE IS SIGNIFICANT IN JUST A MOMENT.

10:56AM 12 LET'S START, AND MAYBE THIS WILL BE A NATURAL SEGUE, SIR,  
10:56AM 13 CAN YOU TELL US A BIT ABOUT THE FACTUAL ASSUMPTIONS THAT FORMED  
10:56AM 14 THE OPINIONS THAT YOU REACHED IN THIS CASE? WHY ARE WE TALKING  
10:56AM 15 ABOUT NEEDING TO RECOVER THE LIS?

10:56AM 16 A. SO FROM THE MATERIALS THAT I REVIEWED, IT WAS THE CASE  
10:57AM 17 THAT THE MATERIALS THAT WERE BEING SUBPOENAED TO SUPPLY  
10:57AM 18 INFORMATION FROM THEIR LIS SYSTEM TO THE GOVERNMENT, AND THERE  
10:57AM 19 WAS AN ATTEMPT TO PROVIDE THAT INFORMATION IN THE FORM OF A SQL  
10:57AM 20 SERVER BACKUP. I THINK ULTIMATELY IT WAS DELIVERED IN AUGUST  
10:57AM 21 OF 2018.

10:57AM 22 THEREAFTER, THE PRODUCTION SYSTEM, THE LIS PRODUCTION  
10:57AM 23 SYSTEM IN PARTICULAR, THE SQL DATABASE SYSTEM, WAS DISASSEMBLED  
10:57AM 24 AND THE HARD DRIVES WERE SENT TO ONE STORAGE LOCATION AND THE  
10:57AM 25 EQUIPMENT WENT TO A DIFFERENT STORAGE LOCATION.

10:57AM 1 Q. OKAY. AND WE'LL BREAK THAT DOWN IN A MOMENT, BUT YOU USED  
10:57AM 2 A TERM "PRODUCTION SYSTEM" OR "PRODUCTION EQUIPMENT."

10:57AM 3 WHAT DO YOU MEAN BY THAT, SIR?

10:58AM 4 A. SO IN STANDARD I.T. ENVIRONMENTS WITHIN CORPORATE  
10:58AM 5 ENVIRONMENTS, YOU HAVE DIFFERENT TYPES OF SETUPS.

10:58AM 6 SO THE ONE THAT IS ACTUALLY RUNNING, THAT USERS ARE  
10:58AM 7 INTERACTING WITH AND MAKING, YOU KNOW, DECISIONS ON IS CALLED  
10:58AM 8 THE PRODUCTION SYSTEM, AND IT'S GENERALLY VERY SECURE AND  
10:58AM 9 CHANGES ARE NOT ALLOWED TO IT.

10:58AM 10 YOU THEN ALSO HAVE TEST SYSTEMS TO ALLOW NEW VERSIONS OF  
10:58AM 11 THE SYSTEM TO BE TESTED, AND NORMALLY IF, IN FACT, THE COMPANY  
10:58AM 12 IS DEVELOPING THAT SYSTEM, CREATING THE SOFTWARE OR DESIGNING  
10:58AM 13 THE DATABASE, THEY'LL HAVE DEVELOPMENT SYSTEMS AS WELL.

10:58AM 14 SO KIND OF THINK OF IT AS AN ASSEMBLY LINE. THE  
10:58AM 15 DEVELOPMENT TEAM ROLLS OUT A NEW VERSION IN THE DEVELOPMENT  
10:58AM 16 SYSTEMS AND THEY PLACE IT ON A TEST AND GET EVERYONE TO SIGN  
10:59AM 17 OFF ON IT, AND THEN IT GOES INTO THE SECURE PRODUCTION  
10:59AM 18 ENVIRONMENT.

10:59AM 19 Q. OKAY. YOU MENTIONED SOMETHING ELSE AS WELL. YOU  
10:59AM 20 MENTIONED THAT ONE OF THE ASSUMPTIONS THAT INFORMED YOUR  
10:59AM 21 OPINIONS IS THAT THE GOVERNMENT RECEIVED A BACKUP COPY.

10:59AM 22 DID I HEAR THAT RIGHT?

10:59AM 23 A. MATERIAL THAT I REVIEWED HAS VARIOUS CORRESPONDENCE, AND  
10:59AM 24 PRIMARILY EMAIL, THAT DISCUSS A USB DEVICE, I THINK ACTUALLY  
10:59AM 25 MORE THAN ONE, AND THE LAST BACKUP OF THE LIS DATABASE WAS

10:59AM 1 PLACED ON EACH OF THESE EXTERNAL DISK DRIVES.

10:59AM 2 THOSE DISK DRIVES THEN WERE FULLY ENCRYPTED, AND SOME OF  
10:59AM 3 THE INFORMATION, IT'S MY UNDERSTANDING, WAS CONFIDENTIAL IN THE  
10:59AM 4 LIS DATABASE.

10:59AM 5 AND SO THEN THOSE UNITS WERE DELIVERED TO VARIOUS  
11:00AM 6 ATTORNEYS, AND ULTIMATELY ONE OR MORE COPIES MADE ITS WAY TO  
11:00AM 7 THE GOVERNMENT.

11:00AM 8 Q. ALL RIGHT. SO YOU SAID "ONE OR MORE OF THESE BACKUP  
11:00AM 9 COPIES WENT TO THE GOVERNMENT."

11:00AM 10 A. YES.

11:00AM 11 Q. DO YOU HAVE AN UNDERSTANDING OF WHETHER OR NOT THE DEFENSE  
11:00AM 12 ALSO GOT THIS COPY?

11:00AM 13 A. THAT'S MY UNDERSTANDING.

11:00AM 14 Q. OKAY. AND I GUESS, MR. SONNIER, WHY AREN'T WE DEALING  
11:00AM 15 WITH THIS COPY IN YOUR UNDERSTANDING?

11:00AM 16 A. FROM THE MATERIALS THAT I REVIEWED, THERE WERE SEVERAL  
11:00AM 17 DIFFICULTIES WITH ACCESSING THE INFORMATION ON THIS EXTERNAL  
11:00AM 18 DRIVE.

11:00AM 19 THE FIRST STUMBLING BLOCK SEEMED TO BE THE FACT THAT THE  
11:00AM 20 ENTIRE DRIVE WAS ENCRYPTED. THAT SEEMED TO CAUSE SOME DELAY IN  
11:00AM 21 ACCESSING IT.

11:00AM 22 IT SEEMS LIKE, THOUGH, THE PASSWORD TO UNLOCK THAT  
11:00AM 23 ENCRYPTION WAS AVAILABLE AND EVERYBODY WAS POTENTIALLY ABLE TO  
11:01AM 24 DECRYPT THE OVERALL DRIVE.

11:01AM 25 THE SECOND PROBLEM SEEMED TO BE THAT THE BACKUP WAS VERY

11:01AM 1 LARGE, AND THE VARIOUS SOFTWARE THAT WAS BEING UTILIZED, AT  
11:01AM 2 LEAST AT THE GOVERNMENT FACILITIES, HAD A LIMITATION AND  
11:01AM 3 COULDN'T PROCESS A SQL DATABASE BACKUP THAT LARGE.

11:01AM 4 FARTHER DOWN THE ROAD, MAYBE TWO YEARS LATER, IT WAS  
11:01AM 5 REALIZED THAT EVEN AFTER DECRYPTING THE DRIVE AND ACCESSING  
11:01AM 6 THESE LARGE BACKUPS WITH APPROPRIATE SOFTWARE, THAT THE BACKUP  
11:01AM 7 ITSELF WAS SEPARATELY AND SORT OF INDEPENDENTLY ENCRYPTED AND A  
11:02AM 8 SECOND PASSWORD WAS NEEDED TO ACTUALLY RECOVER THAT BACKUP TO A  
11:02AM 9 RUNNING SQL SERVER WHERE YOU COULD ACTUALLY ACCESS THE DATA.

11:02AM 10 Q. AND, MR. SONNIER, WERE YOU GIVEN ACCESS TO THIS BACKUP  
11:02AM 11 COPY TO EXAMINE?

11:02AM 12 A. YES. I WAS GIVEN ACCESS REMOTELY WHILE THE DEVICE WAS  
11:02AM 13 RESIDING IN THE ATTORNEY'S OFFICE AND I PERFORMED THE  
11:02AM 14 DECRYPTION OF THE OVERALL DISK DRIVE AND ACCESSED THE FILES ON  
11:02AM 15 IT.

11:02AM 16 Q. AND WHAT ABOUT THAT SECOND LAYER OF ENCRYPTION THAT YOU  
11:02AM 17 MENTIONED? DID YOU EVER TRY TO GET PAST THAT?

11:02AM 18 A. YES. IN THE REVIEW MATERIAL, THERE WAS AT LEAST ONE  
11:02AM 19 DOCUMENT THAT HAD A LOT OF PASSWORDS THAT POTENTIALLY COULD  
11:02AM 20 HAVE BEEN THE PASSWORD NEEDED TO RECOVER THE BACKUP OR RESTORE  
11:03AM 21 IT.

11:03AM 22 AND SO I COPIED A FEW OF THE FILES OFF THE EXTERNAL DISK  
11:03AM 23 DRIVE OVER TO MY OFFICE AND THEN PROCEEDED TO TRY THOSE  
11:03AM 24 PASSWORDS THAT WERE IN THE MATERIAL.

11:03AM 25 Q. WHY DID YOU DO THAT, SIR?

11:03AM 1 A. I WAS ASKED TO BY THE ATTORNEYS.

11:03AM 2 Q. OKAY. THAT'S OUR TEAM?

11:03AM 3 A. YES.

11:03AM 4 Q. OKAY. AND WHAT WERE THE RESULTS?

11:03AM 5 A. UNFORTUNATELY NONE OF THE PASSWORDS FROM THE MATERIALS

11:03AM 6 THAT I REVIEWED WORKED TO RECOVER THE DATA.

11:03AM 7 Q. SO, MR. SONNIER, YOU SAID THAT YOU ASSUMED THAT THERANOS

11:03AM 8 HAD PROVIDED THIS BACKUP COPY TO THE GOVERNMENT; IS THAT RIGHT?

11:03AM 9 A. YEAH. THE INFORMATION THAT I SAW INDICATED THAT IT WENT

11:03AM 10 TO THE THERANOS ATTORNEY AND THAT THE ATTORNEY FOR THERANOS HAD

11:03AM 11 FORWARDED IT ON BY COURIER.

11:03AM 12 Q. OKAY. AND THAT SAME COPY WAS LATER GIVEN TO THE DEFENSE

11:04AM 13 AS WELL?

11:04AM 14 A. SO I THINK THERE WERE INDEPENDENT COPIES, IDENTICAL, AND I

11:04AM 15 THINK DIFFERENT PHYSICAL DEVICES WENT TO DIFFERENT PLACES.

11:04AM 16 Q. I SEE. BUT IDENTICAL COPIES?

11:04AM 17 A. YES. ALL OF THE INFORMATION INDICATES THAT HE COPIED THE

11:04AM 18 EXACT SAME FILES TO ALL OF THE DEVICES.

11:04AM 19 Q. AND, MR. SONNIER, IN YOUR OPINIONS TODAY, YOU DON'T FAULT

11:04AM 20 THE GOVERNMENT FOR NOT BEING ABLE TO OPEN THIS COPY, DO YOU?

11:04AM 21 A. NO. THIS SORT OF THING HAPPENS PERIODICALLY IN THE

11:04AM 22 INDUSTRY.

11:04AM 23 Q. OKAY. AND I THINK YOU JUST TESTIFIED THAT YOU WERE NOT

11:04AM 24 ABLE TO OPEN IT EITHER?

11:04AM 25 A. THAT'S CORRECT.

11:04AM 1 Q. OKAY. DO YOU HAVE AN UNDERSTANDING -- OR TO YOUR  
11:04AM 2 KNOWLEDGE, HAS IT EVER BEEN OPENED?

11:04AM 3 A. NONE OF THE MATERIALS THAT I'VE SEEN INDICATE ANYONE WAS  
11:04AM 4 SUCCESSFUL IN RESTORING THAT BACKUP.

11:04AM 5 Q. OKAY. I'M SORRY. I SHOULD HAVE ASKED, YOU SAID THIS COPY  
11:04AM 6 WAS PROVIDED IN I THINK YOU SAID AUGUST 2018?

11:05AM 7 A. YES.

11:05AM 8 Q. DO YOU HAVE AN UNDERSTANDING AS TO WHETHER MR. BALWANI WAS  
11:05AM 9 AT THERANOS IN AUGUST 2018?

11:05AM 10 MR. BOSTIC: OBJECTION. FOUNDATION.

11:05AM 11 THE COURT: SUSTAINED.

11:05AM 12 BY MR. BRECHER:

11:05AM 13 Q. MR. SONNIER, LET'S TURN TO I GUESS THE SUBSTANCE OF WHAT  
11:05AM 14 YOU'RE HERE TO TALK ABOUT. WE'VE ADDRESSED THIS COPY.

11:05AM 15 IS THAT THE END OF THE MATTER?

11:05AM 16 A. SO FROM WHAT I WAS ASKED TO DO, THE BACKUP COPY WAS SORT  
11:05AM 17 OF A DISTRACTION. FROM MY ORIGINAL REVIEW OF THE MATERIAL, I  
11:05AM 18 SORT OF CONCLUDED THAT THE BEST WAY WOULD BE TO SORT OF GO TO  
11:05AM 19 THE SOURCE OF THAT BACKUP AND NOT WORRY ABOUT THE BACKUP  
11:05AM 20 ITSELF.

11:05AM 21 OBVIOUSLY IF YOU COULD GET THE BACKUP RESTORED, THEN THAT  
11:05AM 22 WOULD BE GREAT. BUT IT SEEMED LIKE A LOT OF PEOPLE HAD ALREADY  
11:05AM 23 TRIED AND WERE UNSUCCESSFUL.

11:05AM 24 SO I THOUGHT YOU SHOULD GO AFTER THE PRODUCTION SERVERS  
11:05AM 25 THEMSELVES.

11:05AM 1 Q. OKAY. AND WHEN YOU DESCRIBED THIS OPINION IN HIGH LEVEL  
11:06AM 2 FORM EARLIER, I THINK YOU DREW A DISTINCTION BETWEEN  
11:06AM 3 AUGUST 2018 AND BEFORE AND AFTER THAT DATE.

11:06AM 4 WHY DID YOU SAY THAT, SIR?

11:06AM 5 A. IN THE MATERIALS THAT I REVIEWED, IT WAS VERY CLEAR THAT  
11:06AM 6 THERE WERE STILL PEOPLE ACCESSING THE DATABASE ALL OF THE WAY  
11:06AM 7 THROUGH THE END OF AUGUST 2018.

11:06AM 8 SO IT WAS UP AND RUNNING AND IT WAS FULLY FUNCTIONAL, AND  
11:06AM 9 OBVIOUSLY THAT WOULD BE AN IDEAL SITUATION TO GO AND EXTRACT  
11:06AM 10 THE DATA, WHATEVER DATA YOU WANTED OUT OF IT.

11:06AM 11 AT THE END OF AUGUST 2018, AT THE DIRECTION OF THERANOS,  
11:06AM 12 THE THERANOS CONTRACTOR DISASSEMBLED THE SYSTEM, SO TURNED IT  
11:06AM 13 OFF, UNPLUGGED IT TO PROTECT THE CONFIDENTIAL INFORMATION --

11:06AM 14 MR. BOSTIC: OBJECTION. FOUNDATION.

11:06AM 15 THE COURT: SUSTAINED.

11:06AM 16 BY MR. BRECHER:

11:06AM 17 Q. SO, MR. SONNIER, LET'S FOCUS ON THAT PERIOD AFTER 2018. I  
11:07AM 18 THINK WE'VE ESTABLISHED YOUR ASSUMPTION THAT THE SYSTEM WAS  
11:07AM 19 DISASSEMBLED; IS THAT FAIR?

11:07AM 20 A. CORRECT.

11:07AM 21 Q. OKAY. COULD YOU STILL GET THIS DATA AFTER IT WAS  
11:07AM 22 DISASSEMBLED?

11:07AM 23 A. YES. SO RIGHT AFTER IT WAS ASSEMBLED, YOU COULD JUST --  
11:07AM 24 DISASSEMBLED, YOU COULD REVERSE THE PROCESS AND REASSEMBLE IT.

11:07AM 25 Q. COULD YOU BRIEFLY WALK US THROUGH THOSE STEPS? WHAT DOES

11:07AM 1 THAT ENTAIL?

11:07AM 2 A. SO IN THE MATERIALS I REVIEWED, THEY SEPARATED THE HARD  
11:07AM 3 DRIVES OUT AND THE EQUIPMENT IN DIFFERENT PLACES. SO YOU WOULD  
11:07AM 4 GO TO THE STORAGE LOCATIONS AND RETRIEVE THOSE PIECES, BRING  
11:07AM 5 THEM BACK TO A COMMON LOCATION. YOU WOULD UTILIZE THE  
11:07AM 6 INVENTORY THAT I MENTIONED EARLIER, WHICH ESSENTIALLY TELLS YOU  
11:07AM 7 WHAT SIZE AND WHAT SPEED, EVEN THE SERIAL NUMBERS OF THE DISK  
11:07AM 8 DRIVES THAT GO INTO VARIOUS PIECES OF EQUIPMENT.

11:08AM 9 SO IT'S A BIT OF LIKE A PUZZLE. YOU HAVE A BUNCH OF HOLES  
11:08AM 10 IN THAT RACK DIAGRAM THAT WE TALKED ABOUT BEFORE WHERE THE DISK  
11:08AM 11 DRIVES GO, AND YOU USE THE INVENTORY INFORMATION TO PUT IT BACK  
11:08AM 12 TOGETHER, YOU KNOW, PLUG IT IN THE RIGHT SPOT.

11:08AM 13 IN SOME CASES YOU MAY NEED TO EXAMINE THE HARD DRIVE SORT  
11:08AM 14 OF AT A LOW LEVEL FORENSICALLY JUST TO READ THE META DATA OFF  
11:08AM 15 OF IT IN ORDER TO FIGURE OUT, YOU KNOW, WHERE IN THE JIGSAW  
11:08AM 16 THAT THAT PARTICULAR PIECE PLUGS IN.

11:08AM 17 Q. AND YOU USED A TERM JUST NOW, "META DATA." WHAT ARE YOU  
11:08AM 18 TALKING ABOUT NOW IN THIS CONTEXT, SIR?

11:08AM 19 A. SO IN THESE ENTERPRISE SYSTEMS, THE DISK DRIVES ALL HAVE A  
11:08AM 20 PORTION OF THEM RESERVED FOR SYSTEM INFORMATION ABOUT THAT  
11:08AM 21 DRIVE'S PURPOSE AND FUNCTION. IT'S DATA, BUT THAT NO USER  
11:09AM 22 WOULD EVER LOOK AT.

11:09AM 23 AND IT'S STRICTLY HIDDEN, IF YOU WILL, ON THE DRIVE SO  
11:09AM 24 THAT WHEN THE DRIVE IS FIRST ACCESSED BY THE SYSTEM, THE SYSTEM  
11:09AM 25 CAN SAY WHAT THE PURPOSE OF THAT DRIVE IS FOR.

11:09AM 1 SO I CALL THAT META DATA. IT'S NOT USER DATA, BUT IT'S  
11:09AM 2 JUST SORT OF SYSTEM DATA ABOUT THAT DRIVE'S PURPOSE.

11:09AM 3 Q. AND YOU WERE SAYING A BIT MORE ABOUT THE PROCESS OF  
11:09AM 4 REASSEMBLING THE CONSTITUENT PARTS AND MAKING SURE THEY ALL  
11:09AM 5 WENT IN THE RIGHT ORDER. COULD YOU SAY MORE ABOUT THAT,  
11:09AM 6 PLEASE.

11:09AM 7 A. SURE. SO THERE -- ACCORDING TO THE INVENTORY, THERE WERE  
11:09AM 8 SERVER DISK DRIVES, AND THOSE WERE A PARTICULAR SIZE AND SPEED,  
11:09AM 9 AND THEY WOULD HAVE BEEN IN A PARTICULAR CADDY FROM THE  
11:09AM 10 MANUFACTURER THAT WOULD HAVE BEEN DISTINCT AND MATCHED UP WITH  
11:09AM 11 THE EQUIPMENT.

11:09AM 12 AND THEN THE ACTUAL DATA STORAGE WOULD HAVE BEEN ON THE  
11:10AM 13 DISK THAT WENT INTO THAT DISK ARRAY, AND THOSE WERE A DIFFERENT  
11:10AM 14 TYPE OF EQUIPMENT, STILL FROM THE SAME COMPUTER MANUFACTURER,  
11:10AM 15 AND THEY WOULD HAVE BEEN DIFFERENT CADDIES AND DIFFERENT SPEED  
11:10AM 16 AND SIZES AND DIFFERENT TYPES OF DISK DRIVES.

11:10AM 17 AND SO ALTOGETHER YOU COULD THEN SAY, OKAY, THESE ARE  
11:10AM 18 SERVERS, THESE ARE DATA DRIVES, AND YOU COULD PLUG THEM INTO  
11:10AM 19 THE DATA ARRAY OR INTO THE SERVER ARRAY.

11:10AM 20 Q. OKAY. AND, MR. SONNIER, THE OTHER THOUGHT, WHAT ABOUT  
11:10AM 21 THIS MISSING PASSWORD ISSUE? WOULD THAT AFFECT YOUR ABILITY TO  
11:10AM 22 RECOVER THE DATA?

11:10AM 23 A. NO. AS I KIND OF MENTIONED EARLIER, THE PASSWORD ISSUE IS  
11:10AM 24 REALLY RELATED TO RECOVERING OF THE BACKUP OF THE SQL SERVER,  
11:10AM 25 AND IT DOESN'T HAVE ANY ROLE IN THIS PROCESS.

11:10AM 1 Q. WHAT ABOUT OTHER FORMS OF ENCRYPTION THAT MAY BE IN PLACE?

11:10AM 2 A. ACCORDING TO THE MATERIALS I REVIEWED, THE DATABASE ITSELF

11:11AM 3 WAS ENCRYPTED AT REST, AND SO THERE ARE ENCRYPTION KEYS, BUT

11:11AM 4 ALL OF THOSE KEYS WERE ON THE PRODUCTION SYSTEM ON THE SERVER

11:11AM 5 DISK DRIVES THAT I'VE JUST MENTIONED.

11:11AM 6 Q. AND IS THAT CONSISTENT WITH YOUR UNDERSTANDING OF A

11:11AM 7 TYPICAL ARCHITECTURE FOR A SYSTEM LIKE THIS?

11:11AM 8 A. YEP, IT'S STRAIGHT DOWN MICROSOFT VENDORS TECHNICAL

11:11AM 9 DOCUMENTATION. THAT'S EXACTLY HOW IT WOULD WORK.

11:11AM 10 Q. OKAY. BUT IN FAIRNESS, MR. SONNIER, YOU NEVER EXAMINED --

11:11AM 11 LET ME ASK IT THIS WAY: DID YOU EVER EXAMINE THE PHYSICAL LIS

11:11AM 12 PRODUCTION?

11:11AM 13 A. NO, I ONLY EXAMINED CERTAIN DOCUMENTS.

11:11AM 14 Q. HOW THEN CAN YOU BE CONFIDENT THAT THERE'S NO OTHER

11:11AM 15 SOFTWARE OR ENCRYPTION THAT WOULD PREVENT OUR ABILITY TO ACCESS

11:11AM 16 THIS DATA?

11:11AM 17 A. BECAUSE WE'RE USING STANDARD MICROSOFT SQL SERVER, THERE'S

11:12AM 18 REALLY -- AND A PARTICULAR FEATURE OF THAT STANDARD SOFTWARE,

11:12AM 19 THERE'S REALLY ONLY ONE WAY THAT THAT STANDARD FEATURE CAN

11:12AM 20 WORK.

11:12AM 21 Q. AND WHAT ABOUT MODIFICATIONS TO, SAY, THE DEVELOPMENT

11:12AM 22 SOFTWARE FOR THE LIS? HOW WOULD THAT AFFECT YOUR OPINIONS?

11:12AM 23 A. SO THE DEVELOPMENT SOFTWARE IS REALLY INDEPENDENT OF THE

11:12AM 24 STANDARD SQL SERVER FOR MICROSOFT.

11:12AM 25 SO IT WAS -- THE TERM WE USE WAS THE APPLICATION PROGRAM,

11:12AM 1 AND IT WOULD HAVE USED THE DATABASE, BUT IT DOESN'T REALLY  
11:12AM 2 CHANGE THE OPERATIONS OF THE SQL SERVER.

11:12AM 3 IT DEPENDS ON THOSE OPERATIONS, BUT IT DOESN'T, IT DOESN'T  
11:12AM 4 MODIFY THEM, CERTAINLY NOT AT THE DATA STORAGE ENCRYPTION  
11:12AM 5 LEVEL.

11:12AM 6 Q. AND IS THAT CONCLUSION BASED ON YOUR TRAINING AND  
11:12AM 7 EXPERIENCE?

11:12AM 8 A. ABSOLUTELY.

11:12AM 9 Q. IS IT ALSO CONSISTENT WITH THE UNDERLYING MATERIALS THAT  
11:12AM 10 YOU'VE REVIEWED IN THIS CASE?

11:12AM 11 A. YES, IT IS.

11:12AM 12 Q. I'M GOING TO ASK YOU TO TURN IN YOUR BINDER TO ANOTHER  
11:13AM 13 TAB. THIS ONE IS MARKED 20832. LET ME KNOW WHEN YOU'RE THERE,  
11:13AM 14 SIR.

11:13AM 15 A. 20832. OKAY.

11:13AM 16 Q. ARE YOU THERE, MR. SONNIER?

11:13AM 17 A. YES, I AM.

11:13AM 18 Q. GREAT.

11:13AM 19 AND I'M GOING TO ASK YOU TO LOOK AT PAGE 2 OF THAT  
11:13AM 20 EXHIBIT.

11:13AM 21 DO YOU SEE THAT THIS IS AN EMAIL SENT OCTOBER 5TH, 2018?

11:13AM 22 A. YES.

11:13AM 23 Q. AND DO YOU SEE THAT THE SENDER IS SOMEONE NAMED  
11:13AM 24 SUTTON PEIRCE?

11:13AM 25 A. YES.

11:13AM 1 Q. AND THE RECIPIENTS ARE ON THE TO LINE, JEFF SCHENK,  
11:13AM 2 ROBERT LEACH, AND JOHN BOSTIC?  
11:13AM 3 A. YES.  
11:13AM 4 Q. AND DO YOU UNDERSTAND THOSE TO BE THE PROSECUTORS IN THIS  
11:13AM 5 CASE?  
11:13AM 6 A. THAT'S MY UNDERSTANDING.  
11:13AM 7 Q. OKAY.  
11:13AM 8 YOUR HONOR, THE DEFENSE OFFERS EXHIBIT 20832 SOLELY FOR  
11:13AM 9 NOTICE TO THE GOVERNMENT.  
11:14AM 10 MR. BOSTIC: 401, YOUR HONOR.  
11:14AM 11 THE COURT: EACH PAGE? WHAT ARE YOU OFFERING?  
11:14AM 12 MR. BRECHER: PAGES 2 THROUGH 4.  
11:14AM 13 THE COURT: AND THIS IS BEING OFFERED NOT FOR THE  
11:14AM 14 TRUTH OF THE MATTER ASSERTED?  
11:14AM 15 MR. BRECHER: THAT'S CORRECT, YOUR HONOR, SOLELY AS  
11:14AM 16 NOTICE TO THE GOVERNMENT.  
11:14AM 17 THE COURT: AS TO WHAT ISSUE?  
11:14AM 18 MR. BRECHER: AS TO THE METHODS OF RECOVERING --  
11:14AM 19 POSSIBLE METHODS FOR RECOVERING THE LIS SYSTEM.  
11:14AM 20 THE COURT: AS TO POSSIBLE ROUTES FORWARD AS  
11:14AM 21 INDICATED IN THE DOCUMENT?  
11:14AM 22 MR. BRECHER: THAT'S RIGHT, YOUR HONOR.  
11:14AM 23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THIS  
11:14AM 24 DOCUMENT WILL BE ADMITTED NOT FOR THE TRUTH OF THE MATTER  
11:14AM 25 ASSERTED IN THE EMAIL, BUT ONLY AS TO THE ISSUE OF NOTICE IN

11:14AM 1 REGARDS TO POSSIBLE ROUTES FORWARD.

11:14AM 2 THE OTHER PAGES, PAGE 3 AND 4, ARE YOU OFFERING THOSE FOR  
11:14AM 3 THE TRUTH OF THE MATTER ASSERTED?

11:14AM 4 MR. BRECHER: NO, YOUR HONOR, JUST AS CONTEXT FOR  
11:14AM 5 THE NOTICE TO SHOW -- I THINK IT'S THE ATTACHMENT TO THIS  
11:15AM 6 EMAIL.

11:15AM 7 THE COURT: ALL RIGHT. SO PAGES 3 AND 4 LIKEWISE,  
11:15AM 8 LADIES AND GENTLEMEN, ARE NOT OFFERED FOR THE TRUTH OF THE  
11:15AM 9 MATTER ASSERTED. THERE MAY BE TESTIMONY REGARDING THOSE PAGES,  
11:15AM 10 BUT IT IS NOT RELATED TO THE TRUTH. IT ONLY GOES, AS  
11:15AM 11 MR. BRECHER SAYS, FOR CONTEXTUAL PURPOSES ONLY, AND IT WILL BE  
11:15AM 12 ADMITTED WITH THOSE LIMITATIONS.

11:15AM 13 IT'S ADMITTED, AND IT MAY BE PUBLISHED.

11:15AM 14 (DEFENDANT'S EXHIBIT 20832 WAS RECEIVED IN EVIDENCE.)

11:15AM 15 MR. BRECHER: THANK YOU, YOUR HONOR.

11:15AM 16 SO, MR. ALLEN, LET'S START ON THIS FIRST PAGE.

11:15AM 17 Q. DO YOU SEE UP AT THE HEADING UNDER ATTACHMENTS IT SAYS  
11:15AM 18 THERANOSSEAGATEDRIVE.PDF?

11:15AM 19 A. YES.

11:15AM 20 Q. OKAY. AND LET ME ASK YOU TO TURN VERY BRIEFLY TO PAGE 4  
11:15AM 21 OF THE DOCUMENT.

11:15AM 22 A. UH-HUH.

11:15AM 23 Q. AND IT WILL BE ON YOUR SCREEN AS WELL. DO YOU RECOGNIZE  
11:15AM 24 THIS? HAVE YOU SEEN IT YOURSELF?

11:15AM 25 A. WHEN I DID MY WORK WITH THE USB DRIVE AND RAN THE

11:16AM 1 DECRYPTION THE PASSWORD, THIS IS THE EXACT SAME FOLDER LISTING  
11:16AM 2 THAT I SAW.  
11:16AM 3 Q. AND WHEN YOU SAY "THE USB DRIVE," YOU'RE REFERRING TO THIS  
11:16AM 4 ENCRYPTED COPY OF THE BACKUP?  
11:16AM 5 A. YES. IT WAS ONE OF THE ENCRYPTED COPIES THAT WE SPOKE OF  
11:16AM 6 EARLIER.  
11:16AM 7 Q. AND IS THAT WHAT YOU UNDERSTAND TO BE THE SUBJECT OF THIS  
11:16AM 8 EMAIL?  
11:16AM 9 A. YES.  
11:16AM 10 Q. OKAY. LET'S GO BACK, MR. ALLEN, TO PAGE 2 ON THE SCREEN.  
11:16AM 11 STARTING AT THE TOP, IT SAYS, "HELLO TEAM,  
11:16AM 12 "I'M WRITING TO OUTLINE THE ISSUES SURROUNDING THIS DRIVE  
11:16AM 13 AND TO PROPOSE SOME POSSIBLE PATHS TOWARD RESOLUTION."  
11:16AM 14 DO YOU SEE THAT?  
11:16AM 15 A. YES.  
11:16AM 16 Q. AND THEN UNDER THE FIRST BOLDED HEADING, WHAT THE DRIVE  
11:16AM 17 CONTAINS, YOU SEE THE FIRST BULLET, "IN THIS CIRCUMSTANCE IT'S  
11:16AM 18 MOST LIKELY THAT THE .BAK EXTENSION INDICATES THAT THESE ARE  
11:17AM 19 BACKUP FILES FOR A MICROSOFT SQL DATABASE."  
11:17AM 20 DID I READ THAT RIGHT?  
11:17AM 21 A. YES.  
11:17AM 22 Q. OKAY. AND THEN THE NEXT BULLET DOWN, "IF THAT'S CORRECT  
11:17AM 23 THESE FILES WOULD BE USED TO RESTORE DATABASE BACKUPS ON A  
11:17AM 24 MICROSOFT SQL SERVER."  
11:17AM 25 DO YOU SEE THAT?

11:17AM 1

A. YES.

11:17AM 2

Q. OKAY. LET'S LOOK DOWN TO THE THIRD AND FINAL BULLET

11:17AM 3

HEADING, "POSSIBLE ROUTES FORWARD."

11:17AM 4

ARE YOU THERE WITH ME, MR. SONNIER?

11:17AM 5

A. YES.

11:17AM 6

Q. AND THE FIRST BULLET SAYS, "PUSH BACK ON DEFENSE AND SEE

11:17AM 7

IF THEY CAN BE PERSUADED TO PRODUCE THIS IN A MANNER THAT CAN

11:17AM 8

BE VIEWED AND PROCESSED IN A STANDARD WAY RATHER THAN IN AN

11:17AM 9

UNSPECIFIED ARCHIVE FORMAT THAT WE CAN'T ACCESS."

11:17AM 10

DO YOU SEE THAT?

11:17AM 11

A. YES.

11:17AM 12

Q. AND THEN IT LOOKS LIKE THERE'S A SUBBULLET UNDER THAT.

11:17AM 13

"IF THEY CAN'T FIGURE OUT HOW TO PRODUCE THE CONTENTS OF THEIR

11:17AM 14

DATABASE IN A LEGITIMATE MANNER, PERHAPS THEY'LL CONSIDER

11:17AM 15

HANDING OVER THEIR PHYSICAL SQL SERVER AND WE CAN SET IT UP IN

11:18AM 16

A WORKROOM?"

11:18AM 17

DO YOU SEE THAT?

11:18AM 18

A. YES.

11:18AM 19

Q. AND THEN THE NEXT BULLET DOWN, "CHECK WITH THE FBI (OR

11:18AM 20

OTHER AGENCIES) TO SEE IF THEY HAVE A RESOURCE THAT CAN PROCESS

11:18AM 21

LARGE SQL DATABASE ARCHIVES."

11:18AM 22

A. YES.

11:18AM 23

Q. AND THEN THE FINAL MAIN BULLET, "IDENTIFY A VENDOR WHO

11:18AM 24

COULD PROCESS THE MATERIAL."

11:18AM 25

DO YOU SEE THAT?

11:18AM 1 A. YES.

11:18AM 2 Q. AND LET'S START WITH THAT "IDENTIFY A VENDOR" BULLET.

11:18AM 3 DO YOU AGREE WITH THAT AS A POSSIBLE ROUTE TO RECOVERING

11:18AM 4 THIS DATA?

11:18AM 5 A. SURE, THAT'S REASONABLE.

11:18AM 6 Q. ARE YOU SUCH A VENDOR?

11:18AM 7 A. YES, I AM.

11:18AM 8 Q. OKAY. GIVEN THE CIRCUMSTANCES AS YOU UNDERSTOOD THEM,

11:18AM 9 WHAT KIND OF ADVICE WOULD YOU HAVE GIVEN IF YOU HAD BEEN

11:18AM 10 CONSULTED AT THIS TIME?

11:18AM 11 MR. BOSTIC: RELEVANCE. CALLS FOR SPECULATION.

11:18AM 12 THE COURT: SUSTAINED.

11:18AM 13 MR. BRECHER: ALL RIGHT.

11:18AM 14 Q. MR. SONNIER, LET'S LOOK AT THE FIRST BULLET, "PUSH BACK ON

11:19AM 15 DEFENSE," AND THEN THE SUBBULLET AFTER THAT.

11:19AM 16 IF THEY CAN'T FIGURE OUT HOW TO PRODUCE THE CONTENTS OF

11:19AM 17 THEIR DATABASE, PERHAPS THEY CAN FIGURE OUT HOW TO HANDLE THEIR

11:19AM 18 SQL SERVER AND WE CAN SET IT UP IN A WORKROOM.

11:19AM 19 WOULD THAT HAVE WORKED?

11:19AM 20 A. YES, THAT WOULD HAVE WORKED.

11:19AM 21 Q. AND IS THAT KIND OF WHAT WE HAVE BEEN TALKING ABOUT HERE?

11:19AM 22 A. YES.

11:19AM 23 Q. AND SO, MR. SONNIER, KIND OF BOTTOM LINE, WHAT IS YOUR

11:19AM 24 CONCLUSION ABOUT THE RECOVERABILITY OF THE LIS SYSTEM IN THIS

11:19AM 25 2018 TIME PERIOD?

11:19AM 1 A. THAT IT WOULD HAVE BEEN POSSIBLE TO GET PRODUCTION TO THE  
11:19AM 2 SQL SERVER AND THEN EXTRACT THE DATA FROM THAT.

11:19AM 3 Q. AND WHAT EFFECT, IF ANY, DOES THE DISASSEMBLY OF THE  
11:19AM 4 SYSTEM HAVE ON YOUR OPINION?

11:19AM 5 A. IT DOESN'T CHANGE IT. IT MIGHT HAVE MADE IT A LITTLE MORE  
11:19AM 6 TIME CONSUMING BECAUSE YOU HAVE TO PUT THE PIECES BACK  
11:19AM 7 TOGETHER.

11:19AM 8 Q. THANK YOU.

11:19AM 9 MAY I HAVE A MOMENT, YOUR HONOR?

11:19AM 10 THE COURT: YES.

11:20AM 11 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

11:20AM 12 MR. BRECHER: THANK YOU VERY MUCH, MR. SONNIER.

11:20AM 13 NO FURTHER QUESTIONS.

11:20AM 14 THE COURT: CROSS-EXAMINATION?

11:20AM 15 MR. BOSTIC: YES, YOUR HONOR.

11:20AM 16 **CROSS-EXAMINATION**

11:20AM 17 BY MR. BOSTIC:

11:20AM 18 Q. GOOD MORNING, MR. SONNIER. I'M JOHN BOSTIC AND I  
11:21AM 19 REPRESENT THE UNITED STATES IN THIS CASE.

11:21AM 20 A. NICE TO MEET YOU.

11:21AM 21 Q. I HAVE A FEW QUESTIONS FOR YOU FOLLOWING UP ON THE TOPICS  
11:21AM 22 THAT YOU DISCUSSED IN YOUR DIRECT EXAMINATION.

11:21AM 23 I'D LIKE TO START WITH YOUR STATUS AT A RETAINED EXPERT.  
11:21AM 24 LET'S TALK ABOUT THAT.

11:21AM 25 YOU'RE HERE TODAY BECAUSE YOU WERE HIRED BY THE

11:21AM 1 DEFENDANT'S LAWYERS TO DELIVER AN OPINION ABOUT SQL DATABASES;  
11:21AM 2 IS THAT CORRECT?

11:21AM 3 A. YES.

11:21AM 4 Q. AND BEFORE BEING CONTACTED BY THE DEFENSE IN THIS CASE,  
11:21AM 5 DID YOU HAVE ANY KNOWLEDGE ABOUT THE TECHNICAL SYSTEMS  
11:21AM 6 OPERATING AT THERANOS?

11:21AM 7 A. NO.

11:21AM 8 Q. DID YOU EVEN KNOW, BEFORE YOU SPOKE TO THE DEFENSE  
11:21AM 9 LAWYERS, THAT THERANOS HAD A SQL DATABASE AT ALL?

11:21AM 10 A. NO, I DID NOT.

11:21AM 11 Q. THE FACT THAT YOU'RE HIRED AS AN EXPERT WITNESS MEANS  
11:21AM 12 THAT, UNLIKE A NORMAL FACT WITNESS, YOU'RE PAID FOR YOUR  
11:21AM 13 SERVICES; IS THAT RIGHT?

11:21AM 14 A. YES.

11:21AM 15 Q. AND YOU TESTIFIED ON DIRECT THAT YOU'RE COMPENSATED AT A  
11:21AM 16 RATE OF \$300 PER HOUR FOR YOUR WORK ON THIS CASE?

11:22AM 17 A. THAT'S WHAT MY TIME IS BILLED AT, YES.

11:22AM 18 Q. AND WHEN WERE YOU FIRST RETAINED BY THE DEFENSE TO WORK ON  
11:22AM 19 THIS MATTER?

11:22AM 20 A. SEPTEMBER LAST YEAR, 2021.

11:22AM 21 Q. AND SINCE THEN, CAN YOU ESTIMATE FOR US EITHER THE NUMBER  
11:22AM 22 OF TOTAL HOURS THAT YOU SPENT WORKING ON THIS MATTER, OR THE  
11:22AM 23 TOTAL AMOUNT THAT YOU BILLED, WHICHEVER IS EASIER?

11:22AM 24 A. I THINK SOMEWHERE BETWEEN 30 AND 40 HOURS, OR AROUND THAT.

11:22AM 25 Q. AND 40 HOURS WOULD EQUATE TO \$12,000 IN BILLING FOR THIS

11:22AM 1 MATTER. DOES THAT SOUND RIGHT TO YOU APPROXIMATELY?

11:22AM 2 A. YEAH. SO I THINK THAT I MENTIONED THAT WHAT I'M BILLING,  
11:22AM 3 MY COMPENSATION IS ABOUT HALF OF THAT.

11:22AM 4 BUT, YES, I THINK THE MATH IS CORRECT.

11:22AM 5 Q. SO THAT WOULD MAKE YOUR COMPENSATION APPROXIMATELY \$6,000  
11:22AM 6 SO FAR FOR THIS CASE?

11:22AM 7 A. SOMETHING LIKE THAT, YES.

11:22AM 8 Q. DO YOU HAVE AN UNDERSTANDING THAT THE DEFENSE LAWYERS IN  
11:22AM 9 THIS CASE VIEW YOUR OPINION AS HELPFUL TO THEIR ARGUMENTS IN  
11:23AM 10 THE CASE?

11:23AM 11 MR. BRECHER: OBJECTION. 401, YOUR HONOR.

11:23AM 12 THE COURT: SUSTAINED.

11:23AM 13 BY MR. BOSTIC:

11:23AM 14 Q. MR. SONNIER, DO YOU HAVE AN UNDERSTANDING AS TO WHETHER  
11:23AM 15 YOU VIEW YOUR OPINION AS HELPFUL TO THE DEFENSE IN THE CASE?

11:23AM 16 AND, YOUR HONOR, THIS GOES TO --

11:23AM 17 MR. BRECHER: OBJECTION. 401.

11:23AM 18 THE COURT: YOU CAN ANSWER THE QUESTION.

11:23AM 19 THE WITNESS: I'M NOT EXACTLY SURE IF IT'S HELPFUL  
11:23AM 20 OR NOT.

11:23AM 21 BY MR. BOSTIC:

11:23AM 22 Q. AS PART OF THE MATERIALS THAT THE DEFENSE PROVIDED YOU,  
11:23AM 23 THEY INCLUDED A NUMBER OF FILINGS MADE BY THE DEFENDANTS IN  
11:23AM 24 THIS CASE; IS THAT RIGHT?

11:23AM 25 A. YES.

11:23AM 1 Q. AND THOSE FILINGS EXPLAIN HOW YOUR OPINION FITS INTO THEIR  
11:23AM 2 ARGUMENTS IN THE CASE; ISN'T THAT RIGHT?

11:23AM 3 A. YEAH, I THINK I'VE SEEN SOME FILINGS TO THAT EFFECT.

11:23AM 4 Q. IS IT YOUR TESTIMONY THAT EVEN AFTER REVIEWING THOSE  
11:24AM 5 FILINGS, YOU DON'T HAVE AN UNDERSTANDING, SITTING HERE TODAY,  
11:24AM 6 AS TO WHETHER OR NOT YOUR OPINION IS HELPFUL TO THE DEFENSE?

11:24AM 7 A. FROM THE FILINGS I WOULD ASSUME THAT THEY'RE MAKING THE  
11:24AM 8 ARGUMENTS BECAUSE THEY THINK IT'S HELPFUL.

11:24AM 9 Q. GOING BACK TO THE SUBJECT OF YOUR COMPENSATION, ARE YOU  
11:24AM 10 BEING COMPENSATED FOR YOUR TIME IN TESTIFYING TODAY?

11:24AM 11 A. YES, I AM.

11:24AM 12 Q. AT THE SAME RATE WE DISCUSSED BEFORE?

11:24AM 13 A. YES, IT'S THE SAME RATE.

11:24AM 14 Q. WOULD YOU EXPECT TO BE TESTIFYING IN THIS CASE CALLED BY  
11:24AM 15 THE DEFENSE IF YOUR OPINION WAS ULTIMATELY NOT HELPFUL TO THE  
11:24AM 16 DEFENSE?

11:24AM 17 MR. BRECHER: OBJECTION. CALLS FOR SPECULATION.

11:24AM 18 THE COURT: IS THIS RELATED TO HIS PRACTICE?

11:24AM 19 MR. BOSTIC: YES, YOUR HONOR. I'M ASKING SOLELY FOR  
11:24AM 20 HIS UNDERSTANDING, AND THIS IS RELEVANT FOR BIAS.

11:24AM 21 THE COURT: IT IS.

11:24AM 22 YOU MAY ANSWER THE QUESTION.

11:24AM 23 THE WITNESS: SO JUST GENERALLY, I WOULD ASSUME THAT  
11:24AM 24 I WOULDN'T BE TESTIFYING IF SOMEHOW MY TESTIMONY WOULDN'T BE  
11:25AM 25 HELPFUL.

11:25AM 1 BY MR. BOSTIC:

11:25AM 2 Q. AND SPECIFICALLY WHEN YOU SAY, "HELPFUL," THAT MEANS  
11:25AM 3 HELPFUL TO THE PARTY WHO HIRED YOU AND WHO IS PAYING YOU;  
11:25AM 4 RIGHT?

11:25AM 5 A. YEAH, I SUPPOSE SO.

11:25AM 6 Q. GENERALLY SPEAKING, YOUR OPINION RELATES TO STEPS THAT YOU  
11:25AM 7 BELIEVE THE GOVERNMENT COULD HAVE TAKEN TO OBTAIN ACCESS TO THE  
11:25AM 8 INFORMATION IN THE THERANOS LIS DATABASE; IS THAT FAIR TO SAY?

11:25AM 9 A. IT WASN'T LIMITED TO JUST THE GOVERNMENT. ANYONE THAT WAS  
11:25AM 10 INTERESTED IN RECOVERING THIS COULD HAVE DONE THE STEPS.

11:25AM 11 Q. OKAY. AND IN PREPARING THAT OPINION, YOU REVIEWED A RANGE  
11:25AM 12 OF MATERIALS THAT THE DEFENSE LAWYERS SUPPLIED YOU WITH; IS  
11:25AM 13 THAT RIGHT?

11:25AM 14 A. THAT'S CORRECT.

11:25AM 15 Q. IN PREPARING YOUR TESTIMONY AND IN REACHING YOUR OPINION,  
11:25AM 16 DID YOU COME TO UNDERSTAND THE GOVERNMENT MADE MULTIPLE  
11:25AM 17 REQUESTS OF THERANOS FOR THE INFORMATION ON THE LIS DATABASE?

11:25AM 18 A. SO IN THE MATERIALS THAT I REVIEWED, IT SEEMED LIKE THERE  
11:26AM 19 WERE MANY REQUESTS AND FOLLOW-UP REQUESTS. EVEN AFTER THERANOS  
11:26AM 20 SORT OF WENT AWAY, THERE WERE FOLLOW-UP REQUESTS WITH THE  
11:26AM 21 ASSIGNEE OF THOSE ASSETS.

11:26AM 22 Q. OKAY.

11:26AM 23 MAY I APPROACH, YOUR HONOR?

11:26AM 24 THE COURT: YES.

11:26AM 25 MR. BOSTIC: (HANDING.)

11:26AM 1 Q. MR. SONNIER, I'VE JUST HANDED YOU SOME DOCUMENTS, AND I'D  
11:26AM 2 LIKE TO GO THROUGH SOME OF THEM WITH YOU.  
11:26AM 3 CAN YOU START BY TURNING TO TAB 5915? AND THAT WILL BE IN  
11:26AM 4 THE FIRST BINDER?  
11:26AM 5 A. OKAY. SO VOLUME 1?  
11:26AM 6 Q. UH-HUH. IT'S 5915.  
11:26AM 7 A. 15?  
11:26AM 8 Q. 5915, UH-HUH.  
11:26AM 9 A. OKAY.  
11:27AM 10 Q. AND LET ME KNOW WHEN YOU'RE THERE.  
11:27AM 11 A. YES, I'M HERE.  
11:27AM 12 Q. AT 5915, DO YOU SEE A COVER LETTER AND A SUBPOENA SENT TO  
11:27AM 13 THERANOS IN FEBRUARY OF 2018?  
11:27AM 14 A. YES, I SEE THAT.  
11:27AM 15 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5915.  
11:27AM 16 MR. BRECHER: OBJECTION. HEARSAY AND 403,  
11:27AM 17 YOUR HONOR. AND FOUNDATION AS TO THIS WITNESS. I APOLOGIZE.  
11:27AM 18 MR. BOSTIC: SO, YOUR HONOR, THIS IS NOT FOR THE  
11:27AM 19 TRUTH. SO THIS IS A NONHEARSAY USE.  
11:27AM 20 THIS WITNESS IS TESTIFYING ABOUT STEPS THAT THE GOVERNMENT  
11:27AM 21 OR ANYONE COULD HAVE TAKEN TO OBTAIN THE LIS ACCORDING TO THIS  
11:27AM 22 WITNESS.  
11:27AM 23 IT IS RELEVANT WHAT STEPS WERE ACTUALLY TAKEN TO OBTAIN  
11:27AM 24 THE LIS I WOULD SAY HIS RESPONSE TO THE DIRECT AND SATISFIES  
11:27AM 25 RULE 403 FOR THAT REASON.

11:28AM 1 THE COURT: YOU'RE OFFERING THE ENTIRETY OF THE  
11:28AM 2 DOCUMENT, INCLUDING THE SUBPOENA?  
11:28AM 3 MR. BOSTIC: YES, YOUR HONOR.  
11:28AM 4 THE COURT: AND THE SUBPOENA IS NOT BEING OFFERED,  
11:28AM 5 OR ANY OF THIS -- NONE OF THIS, I SHOULD SAY, IS BEING OFFERED  
11:28AM 6 FOR THE TRUTH OF THE MATTER ASSERTED.  
11:28AM 7 MR. BOSTIC: CORRECT, YOUR HONOR.  
11:28AM 8 THE COURT: BUT TO INFORM AS TO --  
11:28AM 9 MR. BOSTIC: AS TO THE FACT THAT THE SUBPOENA WAS  
11:28AM 10 SENT ON THE DATE INDICATED SHOWING EFFORTS THAT THE GOVERNMENT  
11:28AM 11 TOOK TO OBTAIN THIS INFORMATION.  
11:28AM 12 MR. BRECHER: YOUR HONOR, I STILL HAVE SOME CONCERNS  
11:28AM 13 ABOUT THE FOUNDATION OF THIS WITNESS. THE GOVERNMENT  
11:28AM 14 REPEATEDLY OBJECTED ON THAT BASIS DURING DIRECT.  
11:28AM 15 HOW DOES MR. SONNIER KNOW WHAT THIS DOCUMENT IS?  
11:28AM 16 THE COURT: DO YOU WANT TO LAY A FOUNDATION IF YOU  
11:28AM 17 CAN, OR ASK SOME ADDITIONAL QUESTIONS ABOUT THOSE?  
11:28AM 18 I UNDERSTAND YOUR -- THE REASON FOR BRINGING THIS, AND I  
11:28AM 19 THINK THERE IS SOME RELEVANCE BASED ON THE TESTIMONY, THE  
11:28AM 20 DIRECT TESTIMONY ABOUT THIS.  
11:28AM 21 MR. BRECHER: YES, YOUR HONOR. RELEVANCE IS NOT OUR  
11:28AM 22 OBJECTION. IT'S FOUNDATION AT THIS POINT. THANK YOU.  
11:28AM 23 MR. BOSTIC: SO, YOUR HONOR, WE MIGHT BENEFIT FROM A  
11:28AM 24 BRIEF SIDE-BAR DISCUSSION. THE LIMITATION THAT THE DEFENSE IS  
11:29AM 25 ADVOCATING FOR DIDN'T SEEM TO APPLY DURING THE DIRECT PORTION

11:29AM 1 OF THE EXAM.

11:29AM 2 THE COURT: I'M GOING TO ADMIT THIS, NOT FOR THE  
11:29AM 3 TRUTH OF THE MATTER ASSERTED, LADIES AND GENTLEMEN, BUT THIS  
11:29AM 4 IS -- THIS WAS TOUCHED ON DURING THE DIRECT, THE BACKGROUND  
11:29AM 5 REGARDING THE LIS AND THE INFORMATION IN IT. THIS PROVIDES  
11:29AM 6 CONTEXT FOR THAT POTENTIALLY.

11:29AM 7 SO IT'S ADMITTED, AND IT MAY BE PUBLISHED, AGAIN, NOT FOR  
11:29AM 8 THE TRUTH OF THE MATTER ASSERTED IN THE DOCUMENT.

11:29AM 9 (GOVERNMENT'S EXHIBIT 5915 WAS RECEIVED IN EVIDENCE.)

11:29AM 10 BY MR. BOSTIC:

11:29AM 11 Q. SO IN A MOMENT, MR. SONNIER, YOU'LL SEE EXHIBIT 5915 ON  
11:29AM 12 THE SCREEN IN FRONT OF YOU.

11:29AM 13 TO START, DO YOU SEE THAT WE'RE LOOKING AT A COVER LETTER  
11:29AM 14 DATED IN MID-FEBRUARY 2018?

11:29AM 15 A. YES.

11:29AM 16 Q. AND THAT'S ABOUT SIX MONTHS BEFORE THE AUGUST 2018 TIME  
11:29AM 17 PERIOD THAT YOU WERE DISCUSSING ON DIRECT; IS THAT RIGHT?

11:29AM 18 A. YES.

11:29AM 19 Q. AND DO YOU SEE THAT THIS IS A LETTER ADDRESSED TO THERANOS  
11:30AM 20 INCORPORATED, CUSTODIAN OF RECORDS?

11:30AM 21 A. YES.

11:30AM 22 Q. AND THE LETTER INFORMS THERANOS THAT IT HAS RECEIVED A  
11:30AM 23 GRAND JURY SUBPOENA IN FURTHERANCE OF AN INVESTIGATION.

11:30AM 24 DO YOU SEE THAT?

11:30AM 25 A. YES.

11:30AM 1 Q. LET'S TURN TO PAGE 2 OF THIS EXHIBIT. AND DO YOU SEE THAT

11:30AM 2 NOW WE'RE LOOKING AT THE SUBPOENA ITSELF?

11:30AM 3 A. YES.

11:30AM 4 Q. AND THE SUBPOENA IS DATED FEBRUARY 13TH, AND IT'S SIGNED

11:30AM 5 BY JEFF SCHENK, WHO YOU UNDERSTAND TO BE ONE OF THE PROSECUTORS

11:30AM 6 IN THE CASE YOU TESTIFIED?

11:30AM 7 A. YES.

11:30AM 8 Q. LET'S LOOK NOW AT PAGE 5 OF THE EXHIBIT.

11:30AM 9 DO YOU SEE HERE THAT THERE ARE SOME INSTRUCTIONS FOR

11:30AM 10 COMPLYING WITH THE SUBPOENA?

11:30AM 11 A. THERE ARE INSTRUCTIONS TITLES HERE.

11:30AM 12 Q. AND UNDER THE INSTRUCTIONS, PART A, IT INFORMS THERANOS

11:31AM 13 THAT IT'S TO PROVIDE DOCUMENTS FITTING BETWEEN TWO DATES, AND

11:31AM 14 THAT'S JULY 1ST, 2014, AND SEPTEMBER 1ST, 2014.

11:31AM 15 DO YOU SEE THAT?

11:31AM 16 A. YES.

11:31AM 17 Q. AND THEN LET'S LOOK AT THE DOCUMENTS THAT ARE ACTUALLY

11:31AM 18 BEING REQUIRED ON PAGE 12.

11:31AM 19 DO YOU SEE UNDER THERE, THERE'S A TITLE HEADING DOCUMENTS

11:31AM 20 TO BE PRODUCED?

11:31AM 21 A. YES, I SEE THAT HEADING.

11:31AM 22 Q. AND UNDER DOCUMENTS TO BE PRODUCED, THERANOS IS INSTRUCTED

11:31AM 23 UNDER THE SUBPOENA TO PRODUCE "THE ENTIRETY OF ALL BLOOD TEST

11:31AM 24 REPORTS, EXCEPT AS DESCRIBED BELOW."

11:31AM 25 DO YOU SEE THAT?

11:31AM 1  
11:31AM 2  
11:31AM 3  
11:32AM 4  
11:32AM 5  
11:32AM 6  
11:32AM 7  
11:32AM 8  
11:32AM 9  
11:32AM 10  
11:32AM 11  
11:32AM 12  
11:32AM 13  
11:32AM 14  
11:32AM 15  
11:32AM 16  
11:32AM 17  
11:33AM 18  
11:33AM 19  
11:33AM 20  
11:33AM 21  
11:33AM 22  
11:33AM 23  
11:33AM 24  
11:33AM 25

A. YES.

Q. OKAY. WE CAN PUT THAT ASIDE.

DO YOU KNOW ANYTHING ABOUT WHAT THERANOS PRODUCED TO THE GOVERNMENT IN RESPONSE TO THAT FEBRUARY SUBPOENA FOR LAB REPORTS?

A. I HAVE SEEN SOME MATERIALS THAT INDICATE THAT I THINK THAT THE THERANOS ATTORNEY WAS REPRESENTING THAT THEY HAD PRODUCED EVERYTHING ASKED FOR BY THE GOVERNMENT.

I DON'T KNOW THAT I CAN SAY IT WAS SPECIFIC FOR THIS SUBPOENA, BUT THE MATERIAL THAT I SAW SEEMED TO BE ASKING FOR THE SAME SET OF THINGS.

Q. AMONG THE MATERIALS THAT THE DEFENSE LAWYERS PROVIDED YOU FOR REVIEW, DID YOU SEE ANY OF THE MATERIALS FROM THAT PRODUCTION?

A. IF I DID, IT WASN'T LINKED UP THAT WAY FOR ME.

Q. TURN, IF YOU WOULD, TO THE NEXT TAB IN THE BINDER, AND THAT'S 5916. AND AT 5916, DO YOU SEE ANOTHER SUBPOENA TO THERANOS, THIS ONE DATED MAY 2018?

A. YES.

Q. OR SORRY, THIS ONE IS ACTUALLY DATED APRIL 2018.

DO YOU SEE THAT AT THE BOTTOM OF THE PAGE?

A. AT THE BOTTOM? RIGHT. OKAY.

THERE'S A DATE AND TIME HIGHER UP, BUT THE DATE AT THE BOTTOM NEXT TO THE SIGNATURE IS APRIL.

MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5916

11:33AM 1 FOR THE SAME BASIS AS 5915.

11:33AM 2 THE COURT: NOT FOR THE TRUTH OF THE MATTER

11:33AM 3 ASSERTED?

11:33AM 4 MR. BOSTIC: CORRECT.

11:33AM 5 MR. BRECHER: NO OBJECTION.

11:33AM 6 THE COURT: IT'S ADMITTED.

11:33AM 7 AND IT IS ADMITTED, LADIES AND GENTLEMEN, AGAIN, NOT FOR

11:33AM 8 THE TRUTH OF THE MATTER ASSERTED IN HERE, BUT SOLELY AS TO

11:33AM 9 EXPLANATORY AND CONTEXTUAL DISCUSSION, AND IT MAY BE PUBLISHED.

11:33AM 10 (GOVERNMENT'S EXHIBIT 5916 WAS RECEIVED IN EVIDENCE.)

11:33AM 11 BY MR. BOSTIC:

11:33AM 12 Q. FIRST LET'S LOOK AT PAGE 1 OF THIS DOCUMENT. IS THIS THE

11:33AM 13 SECOND SUBPOENA THAT WE'RE REVIEWING NOW, MR. SONNIER?

11:34AM 14 A. I DON'T KNOW IF IT'S FIRST OR SECOND, BUT IT'S ANOTHER

11:34AM 15 SUBPOENA.

11:34AM 16 Q. SECOND ONE THAT WE HAVE LOOKED AT TODAY; CORRECT?

11:34AM 17 A. SECOND ONE, CORRECT.

11:34AM 18 Q. LET'S LOOK AT PAGE 4. THIS, UNDER INSTRUCTIONS, CALLS FOR

11:34AM 19 A MUCH WIDER TIMEFRAME, 2006 THROUGH 2016.

11:34AM 20 A. YES, I SEE THAT.

11:34AM 21 Q. LET'S LOOK AT PAGE 11. AND UNDER PAGE 11, DOCUMENTS TO BE

11:34AM 22 PRODUCED.

11:34AM 23 DO YOU SEE THAT THIS SUBPOENA CALLS FOR "THE ENTIRETY OF

11:34AM 24 ALL BLOOD TEST LAB REPORTS MAINTAINED IN THE LIS DATABASE,

11:34AM 25 EXCEPT AS DESCRIBED BELOW."

11:34AM 1 DO YOU SEE THAT?

11:34AM 2 A. YES, I SEE THAT.

11:34AM 3 Q. AND IT SAYS, "PLEASE PRODUCE THESE REPORTS IN THE SAME  
11:34AM 4 FORMAT ORIGINALLY PROVIDED TO SUCH PATIENTS."

11:34AM 5 DO YOU SEE THAT LANGUAGE?

11:34AM 6 A. YES, I SEE THAT.

11:35AM 7 Q. AND LET'S LOOK AT THE NEXT PAGE, PAGE 12.

11:35AM 8 AND DO YOU SEE THERE THERE IS SOME LANGUAGE IN BOLD THAT  
11:35AM 9 SAYS "NOTICE CONCERNING DOCUMENT DESTRUCTION AND OBSTRUCTION OF  
11:35AM 10 JUSTICE"?

11:35AM 11 A. I SEE THAT NOTICE.

11:35AM 12 Q. AND THAT LANGUAGE READS, "ANY PERSON WHO WITHHOLDS,  
11:35AM 13 ALTERS, DELETES, OR DESTROYS DOCUMENTS -- INCLUDING ELECTRONIC  
11:35AM 14 DOCUMENTS -- DEMANDED BY THIS SUBPOENA, OR WHO REMOVES OR  
11:35AM 15 TRANSFERS SUCH DOCUMENTS TO OUTSIDE THE JURISDICTION OF THE  
11:35AM 16 UNITED STATES, MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR  
11:35AM 17 OBSTRUCTION OF JUSTICE," OR OTHER VIOLATIONS.

11:35AM 18 DO YOU SEE THAT?

11:35AM 19 A. YES, I SEE THAT.

11:35AM 20 Q. AND THERANOS WAS BEING INFORMED OF THIS IN APRIL OF 2018;  
11:35AM 21 IS THAT YOUR UNDERSTANDING?

11:35AM 22 A. YES.

11:35AM 23 Q. WE CAN SET THAT ASIDE.

11:35AM 24 YOU TESTIFIED ON DIRECT THAT YOUR UNDERSTANDING IS THAT  
11:35AM 25 THE GOVERNMENT DID EVENTUALLY RECEIVE A COPY OF LIS FROM

11:35AM 1 THERANOS; IS THAT RIGHT?

11:35AM 2 A. IT RECEIVED AN LIS DATABASE BACKUP.

11:35AM 3 Q. IS THAT THE SAME THING AS A COPY?

11:36AM 4 A. IT'S ALL THE DATA THAT IS IN THE SYSTEM, SO IT'S A COPY OF  
11:36AM 5 THAT DATA. IT'S NOT THE SYSTEM THOUGH.

11:36AM 6 Q. BUT IT SHOULD CONTAIN A COPY OF ALL OF THE INFORMATION ON  
11:36AM 7 THE DATABASE?

11:36AM 8 A. YES, ALL OF THE INFORMATION THAT WAS -- THAT LIVED INSIDE  
11:36AM 9 OF THE DATABASE WOULD HAVE BEEN IN THAT BACKUP.

11:36AM 10 Q. AND AS PART OF YOUR WORK IN THIS CASE, THE DEFENSE  
11:36AM 11 PROVIDED YOU WITH A COPY OF WHAT THERANOS HAD PROVIDED THE  
11:36AM 12 GOVERNMENT; IS THAT RIGHT?

11:36AM 13 A. IT'S, IT'S -- THE COPY REMAINED IN THE ATTORNEY'S OFFICE.  
11:36AM 14 I JUST ACCESSED IT REMOTELY, BUT I DID ACCESS IT.

11:36AM 15 Q. AND YOU SAY YOU ACCESSED IT, BUT, IN FACT, YOU WERE NOT  
11:36AM 16 ABLE TO GAIN ACCESS TO THE DATA IN THE DATABASE; ISN'T THAT  
11:36AM 17 RIGHT?

11:36AM 18 A. THAT'S CORRECT. I JUST ACCESSED THE EXTERNAL DRIVE ON  
11:36AM 19 WHICH THE BACKUP LIVED. I WAS ABLE TO LOOK AT THE FILES, BUT I  
11:36AM 20 WAS NOT ABLE TO ACTUALLY GO THROUGH AND RECOVER THAT DATA INTO  
11:37AM 21 A WORKING SQL SERVER.

11:37AM 22 Q. YOU TESTIFIED EARLIER ABOUT YOUR EXPERIENCE AND EXPERTISE  
11:37AM 23 RELATING TO THE SQL SERVERS.

11:37AM 24 DID YOU BRING THAT EXPERIENCE AND EXPERTISE TO BEAR IN  
11:37AM 25 TRYING TO GET INTO THAT HARD DRIVE?

11:37AM 1 A. YES, I DID.

11:37AM 2 Q. AND YOU WERE UNSUCCESSFUL?

11:37AM 3 A. I WAS.

11:37AM 4 Q. CAN YOU THINK OF ANYTHING ELSE THAT YOU COULD HAVE TRIED

11:37AM 5 TO GET INTO THAT HARD DRIVE THAT YOU DIDN'T TRY?

11:37AM 6 A. THE LAST OPTION THAT WOULD HAVE BEEN AVAILABLE, WHICH IS A

11:37AM 7 REAL SORT OF LONG SHOT, WOULD BE TO TRY TO BRUTE FORCE BREAK

11:37AM 8 THE ENCRYPTION. BUT IT'S A VERY INDUSTRY STANDARD ENCRYPTION,

11:37AM 9 AND IT WOULD TAKE, YOU KNOW, A VERY LONG PERIOD OF TIME TO TRY

11:37AM 10 TO DO SUCH A THING.

11:37AM 11 Q. AND YOU DID NOT MAKE THAT ATTEMPT WHEN IT CAME TO --

11:38AM 12 A. NO, I DID NOT.

11:38AM 13 Q. YOU TESTIFIED ON DIRECT THAT THERE CAME A TIME WHEN

11:38AM 14 THERANOS DISASSEMBLED THE ORIGINAL HARDWARE THAT WAS RUNNING

11:38AM 15 THEIR VERSION OF THE LIS.

11:38AM 16 DO YOU RECALL THAT?

11:38AM 17 A. YES. THAT'S, THAT'S -- FROM THE INFORMATION THAT I

11:38AM 18 REVIEWED, THAT'S WHAT HAPPENED.

11:38AM 19 Q. FROM THE INFORMATION THAT YOU REVIEWED, DO YOU HAVE AN

11:38AM 20 UNDERSTANDING AS TO THE TIMING THERE? IN OTHER WORDS, HOW SOON

11:38AM 21 AFTER THERANOS GAVE THE GOVERNMENT A COPY DID IT TAKE APART THE

11:38AM 22 ORIGINAL?

11:38AM 23 A. OH, AT LEAST FROM THE INFORMATION THAT I REVIEWED, THE

11:38AM 24 ACTUAL DELIVERY OF THE COPY SEEMED TO BE VERY CLOSE TO WHEN THE

11:38AM 25 EQUIPMENT WAS DISASSEMBLED.

11:38AM 1 BUT I COULDN'T SAY FOR SURE EXACTLY THE TIMING.

11:38AM 2 IT SEEMS THAT THE DISK DRIVES WERE SENT BY COURIER, SAY,  
11:39AM 3 MAYBE A DAY OR SO BEFORE THE EQUIPMENT WAS DISASSEMBLED.

11:39AM 4 Q. AND WHAT'S YOUR UNDERSTANDING, IF YOU HAVE ONE, AS TO THE  
11:39AM 5 CURRENT LOCATION OF THE ORIGINAL HARD DRIVES CONTAINING THE  
11:39AM 6 THERANOS LIS?

11:39AM 7 A. NOTHING I HAVE SEEN SAYS THAT THEY'RE ANYWHERE OTHER THAN  
11:39AM 8 THE STORAGE LOCKERS THAT THEY WERE ORIGINALLY PLACED INTO AFTER  
11:39AM 9 DISASSEMBLY.

11:39AM 10 Q. HAVE YOU MADE ANY EFFORT TO CONFIRM THAT THOSE DISK DRIVES  
11:39AM 11 ARE STILL AVAILABLE?

11:39AM 12 A. I BELIEVE I SORT OF ASKED ABOUT THAT, BUT NO ONE SEEMS TO  
11:39AM 13 KNOW.

11:39AM 14 Q. SO LET ME JUST BE CLEAR THEN. DO YOU HAVE FIRST-HAND  
11:39AM 15 KNOWLEDGE OF WHERE THOSE DISK DRIVES ARE, AND THAT IS, THE  
11:39AM 16 ORIGINAL DISK DRIVES THAT WERE HOUSING THE THERANOS VERSION OF  
11:39AM 17 THE LIS?

11:39AM 18 A. NO. ALL I KNOW IS WHAT WAS IN THE MATERIALS THAT I  
11:39AM 19 REVIEWED, AND IT WAS JUST GENERALLY THAT THEY WERE TAKEN TO  
11:40AM 20 STORAGE LOCATIONS.

11:40AM 21 Q. AND, IN FACT, DURING THE COURSE OF YOUR WORK FOR  
11:40AM 22 MR. BALWANI'S LAWYERS, THEY ASKED YOU WHETHER YOU HAD BEEN ABLE  
11:40AM 23 TO DETERMINE THE LOCATION OF THOSE DRIVES.

11:40AM 24 DO YOU REMEMBER THAT?

11:40AM 25 A. I DON'T SPECIFICALLY RECALL THAT, BUT PROBABLY. I MEAN,

11:40AM 1 WE DID, WE DID TALK ABOUT WHERE THE EQUIPMENT WAS STORED AND  
11:40AM 2 WHERE THE DISK DRIVES WERE STORED.

11:40AM 3 Q. IF I COULD ASK YOU TO LOOK IN YOUR BINDER AT TAB 5924.

11:40AM 4 A. 4? OKAY. 5924.

11:40AM 5 Q. AND DO YOU SEE THERE AN EMAIL BETWEEN YOU AND  
11:40AM 6 MR. COOPERSMITH, THE DEFENDANT'S LAWYER?

11:40AM 7 A. YES.

11:40AM 8 Q. AND DOES THAT REFRESH YOUR RECOLLECTION THAT IN OCTOBER OF  
11:40AM 9 LAST YEAR, MR. COOPERSMITH ASKED YOU WHERE THE DISK DRIVES WERE  
11:41AM 10 STORED?

11:41AM 11 A. YES, I SEE THAT.

11:41AM 12 Q. AND DO YOU SEE YOUR RESPONSE ABOVE?

11:41AM 13 A. YES. IN THE RESPONSE ABOVE, I REFERENCED ONE OF THE  
11:41AM 14 DOCUMENTS THAT I REVIEWED, MAKING IT SEEM THAT THE DISK DRIVES  
11:41AM 15 WOULD HAVE BEEN STORED AT A STORAGE LOCATION, IN PARTICULAR,  
11:41AM 16 ONE RUN BY IRON MOUNTAIN.

11:41AM 17 Q. AND DO YOU SEE THAT YOUR RESPONSE INCLUDES SOME  
11:41AM 18 CONFLICTING INFORMATION?

11:41AM 19 MR. BRECHER: OBJECTION. MISCHARACTERIZES THIS  
11:41AM 20 EMAIL.

11:41AM 21 AND THE DOCUMENT IS NOT IN EVIDENCE, YOUR HONOR.

11:41AM 22 THE COURT: WELL, HE CAN TESTIFY ABOUT WHAT HE  
11:41AM 23 PERCEIVES FROM THE DOCUMENT, SO OVERRULED.

11:41AM 24 THE WITNESS: YES. I DON'T RECALL THAT RIGHT NOW.

11:41AM 25 BUT APPARENTLY AT THE TIME I WROTE THIS EMAIL, I HAD SEEN

11:42AM 1 OTHER MATERIALS THAT HAD SAID THIS WAS IN ANOTHER STORAGE  
11:42AM 2 LOCATION, AND I CONCLUDED THAT THE OTHER STORAGE LOCATION BEING  
11:42AM 3 REFERRED TO THERE WAS, IN FACT, IRON MOUNTAIN.

11:42AM 4 BY MR. BOSTIC:

11:42AM 5 Q. I'M SORRY. DID YOU SAY WAS OR WAS NOT IRON MOUNTAIN?

11:42AM 6 A. WAS.

11:42AM 7 Q. OKAY. AND YOU CONCLUDED THAT BASED ON YOUR REVIEW OF  
11:42AM 8 DOCUMENTS PROVIDED TO YOU BY THE DEFENSE LAWYERS?

11:42AM 9 A. YES, THE SAME MATERIALS THAT I'VE BEEN REVIEWING THIS  
11:42AM 10 WHOLE TIME.

11:42AM 11 Q. SO SITTING HERE TODAY, YOU BELIEVE THAT THE ORIGINAL HARD  
11:42AM 12 DRIVES CONTAINING THAT INFORMATION ARE STILL IN STORAGE AT IRON  
11:42AM 13 MOUNTAIN?

11:42AM 14 A. I HAVE SEEN NO MATERIALS TO SAY THAT THEY'RE NOT THERE,  
11:42AM 15 BUT I HAVE NO -- YOU KNOW, I HAVE NEVER GONE TO THIS FACILITY  
11:42AM 16 TO SEE FOR MYSELF.

11:42AM 17 Q. ARE YOU AWARE OF ANYONE THAT YOU WORK WITH IN CONNECTION  
11:42AM 18 WITH THIS CASE MAKING THAT EFFORT TO DETERMINE WHETHER THOSE  
11:43AM 19 DRIVES WERE THERE?

11:43AM 20 A. NO, I'M NOT AWARE OF ANY EFFORT LIKE THAT.

11:43AM 21 Q. IF I COULD ASK YOU TO LOOK AT TAB 5927.

11:43AM 22 AND YOU TESTIFIED ON DIRECT THAT AMONG THE MATERIALS THAT  
11:43AM 23 YOU REVIEWED TO HELP YOU REACH YOUR OPINION WERE SOME REPORTS  
11:43AM 24 OF WITNESSES CONDUCTED BY THE FBI; IS THAT RIGHT?

11:43AM 25 A. THAT'S CORRECT.

11:43AM 1 Q. IF YOU WOULD LOOK AT 5927, DO YOU SEE ONE OF THOSE REPORTS  
11:43AM 2 THAT YOU REVIEWED AND CONSIDERED?

11:43AM 3 A. THIS APPEARS TO BE ONE OF THE FBI REPORTS, INTERVIEW  
11:43AM 4 REPORTS.

11:43AM 5 Q. I'LL ASK YOU TO LOOK AT PAGE 3 OF THAT DOCUMENT. AND AT  
11:44AM 6 THE TOP OF PAGE 3, DO YOU SEE THAT YOU WERE BEING PROVIDED WITH  
11:44AM 7 INFORMATION INDICATING THAT A THERANOS EMPLOYEE DID NOT KNOW  
11:44AM 8 WHERE THESE HARD DRIVES HAD BEEN TAKEN FOR STORAGE?

11:44AM 9 A. SO WHERE ON PAGE 3 YOU SAID?

11:44AM 10 Q. SURE. AT THE TOP OF PAGE 3 IN THE TOP PARAGRAPH. TAKE A  
11:44AM 11 MOMENT AND READ THAT WHOLE PARAGRAPH IF YOU WOULD LIKE.

11:44AM 12 (PAUSE IN PROCEEDINGS.)

11:44AM 13 BY MR. BOSTIC:

11:44AM 14 Q. JUST LET ME KNOW WHEN YOU'RE DONE.

11:44AM 15 A. SURE.

11:44AM 16 (PAUSE IN PROCEEDINGS.)

11:44AM 17 THE WITNESS: OKAY. I'VE READ IT NOW.

11:44AM 18 BY MR. BOSTIC:

11:44AM 19 Q. AND DOES THAT REFRESH YOUR MEMORY THAT YOU WERE PROVIDED  
11:45AM 20 INFORMATION INDICATING THAT A THERANOS EMPLOYEE INVOLVED WITH  
11:45AM 21 THESE EVENTS DID NOT KNOW WHERE THOSE HARD DRIVES HAD BEEN  
11:45AM 22 STORED?

11:45AM 23 MR. BRECHER: OBJECTION. YOUR HONOR, THIS IS NOT AN  
11:45AM 24 INTERVIEW WITH A THERANOS EMPLOYEE, FOR ONE.

11:45AM 25 THE COURT: WELL, THIS IS JUST USED TO REFRESH THE

11:45AM 1 RECOLLECTION. IT DOESN'T NECESSARILY HAVE TO BE A SPECIFIC  
11:45AM 2 WITNESS. IF IT REFRESHES HIS RECOLLECTION, IT ACCOMPLISHES  
11:45AM 3 THAT.

11:45AM 4 MR. BOSTIC: I'M HAPPY TO CORRECT THAT DETAIL,  
11:45AM 5 YOUR HONOR.

11:45AM 6 THE COURT: SURE, IF YOU'D LIKE.

11:45AM 7 BY MR. BOSTIC:

11:45AM 8 Q. SO, MR. SONNIER, DOES WHAT YOU'VE JUST REVIEWED REFRESH  
11:45AM 9 YOUR RECOLLECTION THAT AN I.T. PROFESSIONAL INVOLVED IN THESE  
11:45AM 10 EVENTS WAS UNAWARE OF WHERE THE ORIGINAL HARD DRIVES WERE  
11:45AM 11 STORED?

11:45AM 12 A. SO THE I.T. PROFESSIONAL IN QUESTION WAS A CONTRACTOR WHO  
11:45AM 13 ACTUALLY HAD DONE THE DISASSEMBLY IS MY UNDERSTANDING, AND I  
11:46AM 14 THINK IT EVEN SAYS HERE THAT HE REMEMBERS WHEN HE TOOK THE HARD  
11:46AM 15 DRIVES OUT THAT THEY WERE PACKED IN A BOX, AND HE DIDN'T KNOW  
11:46AM 16 WHERE THAT BOX WAS DELIVERED BECAUSE IT WAS OUTSIDE OF HIS  
11:46AM 17 SCOPE OF WORK.

11:46AM 18 Q. AND IS IT ALSO YOUR UNDERSTANDING THAT THOSE HARD DRIVES  
11:46AM 19 WERE TAKEN SOMEWHERE OTHER THAN WHERE THE REST OF THE LIS  
11:46AM 20 EQUIPMENT WAS STORED?

11:46AM 21 A. YES, IT -- MY UNDERSTANDING IS THAT THE EQUIPMENT WAS  
11:46AM 22 STORED IN A DIFFERENT LOCATION THAN WHEREVER THE HARD DRIVES  
11:46AM 23 ACTUALLY WENT TO.

11:46AM 24 Q. OKAY. YOU CAN SET THAT ASIDE.

11:46AM 25 IN CONNECTION WITH YOUR WORK IN THIS CASE, YOU PREPARED A

11:46AM 1 WRITTEN DECLARATION.

11:46AM 2 DO YOU REMEMBER THAT?

11:46AM 3 A. YES.

11:46AM 4 Q. AND IF YOU COULD LOOK IN THE SECOND BINDER AT TAB 5935.

11:46AM 5 A. 35?

11:46AM 6 Q. 5935. AND DO YOU SEE -- OH, I'LL WAIT FOR YOU TO GET

11:47AM 7 THAT.

11:47AM 8 A. YES, I'M LOOKING AT IT.

11:47AM 9 Q. AND IS THAT A COPY OF THE DECLARATION THAT YOU PREPARED?

11:47AM 10 A. I'M JUST GETTING -- IT'S GOT A LOT OF PIECES TO IT.

11:47AM 11 Q. OF COURSE.

11:47AM 12 A. I'LL JUST CHECK REAL QUICK.

11:47AM 13 YES.

11:47AM 14 Q. AND THAT DECLARATION CONTAINS AND EXPLAINS THE OPINIONS

11:47AM 15 THAT YOU TESTIFIED ABOUT TODAY; IS THAT CORRECT?

11:47AM 16 A. YES, IT DOES.

11:47AM 17 Q. DID YOU PREPARE THAT DECLARATION INDEPENDENTLY OR DID YOU

11:47AM 18 WORK WITH DEFENSE COUNSEL IN CREATING IT?

11:47AM 19 A. I DRAFTED THE FULL BODY OF THE OPINION MYSELF, AND THEN

11:47AM 20 DEFENSE COUNSEL HAD SOME SUGGESTIONS FOR EDITS.

11:47AM 21 Q. AND DID YOU TAKE THOSE SUGGESTIONS AND MAKE SOME OF THE

11:47AM 22 REQUESTED EDITS?

11:47AM 23 A. YEAH, THEY WERE ALL VERY MINOR SORT OF WORDSMITHING.

11:48AM 24 Q. ULTIMATELY, THOUGH, YOU SIGNED OFF ON THAT DECLARATION

11:48AM 25 UNDER OATH; IS THAT CORRECT?

11:48AM 1

A. YES.

11:48AM 2

Q. SO THE LANGUAGE IN THAT DECLARATION ACCURATELY REFLECTS

11:48AM 3

YOUR OPINIONS IN THIS CASE; IS THAT RIGHT?

11:48AM 4

A. YES, THIS DECLARATION REPRESENTS MY OPINIONS.

11:48AM 5

Q. AND THERE'S MORE IN THE DECLARATION BESIDES YOUR OPINIONS.

11:48AM 6

YOU ALSO RELAYED THE BASES FOR YOUR OPINIONS; ISN'T THAT RIGHT?

11:48AM 7

A. THAT IS CORRECT.

11:48AM 8

Q. IF YOU DECIDED TO INCLUDE A FACT OR A STATEMENT IN THE

11:48AM 9

DECLARATION, IS IT FAIR TO ASSUME THAT THAT'S BECAUSE YOU

11:48AM 10

VIEWS THAT STATEMENT OR FACT AS RELEVANT TO YOUR ULTIMATE

11:48AM 11

OPINIONS?

11:48AM 12

A. YES. I WAS TRYING TO KIND OF LAY OUT THE SURROUNDING

11:48AM 13

CIRCUMSTANCES AT THE TIME OF THE EVENTS, AND THEN USE THAT AS

11:48AM 14

PART OF THE BASIS FOR MY OPINION.

11:48AM 15

Q. ALL RIGHT. YOU TESTIFIED ON DIRECT ABOUT YOUR BELIEF THAT

11:48AM 16

THE GOVERNMENT COULD HAVE REACQUIRED THE THERANOS LIS

11:49AM 17

INFORMATION EVEN AFTER THE ORIGINAL WAS DISASSEMBLED.

11:49AM 18

IS THAT A FAIR CHARACTERIZATION?

11:49AM 19

A. THAT IS CORRECT.

11:49AM 20

Q. JUST TO BE CLEAR, THOUGH, YOU'RE NOT HERE BECAUSE YOU HAVE

11:49AM 21

ANY SPECIAL KNOWLEDGE ABOUT THE SPECIFIC DATABASE USED AT

11:49AM 22

THERANOS; IS THAT RIGHT?

11:49AM 23

A. NO, I HAVE NO KNOWLEDGE OF THE SPECIFIC DATABASE.

11:49AM 24

Q. YOUR EXPERTISE IS IN SQL DATABASES GENERALLY?

11:49AM 25

A. THAT IS CORRECT.

11:49AM 1 Q. AND TO THE EXTENT THAT YOU HAD AN UNDERSTANDING OF THE  
11:49AM 2 THERANOS DATABASE, IT IS SECOND OR THIRD HAND? IS THAT FAIR TO  
11:49AM 3 SAY? IT COMES FROM THE MATERIALS THAT YOU'VE READ?

11:49AM 4 A. YES, MY KNOWLEDGE OF THERANOS DATABASE IS ONLY FROM THE  
11:49AM 5 MATERIALS THAT I REVIEWED, WHATEVER HANDEDNESS THOSE MATERIALS  
11:49AM 6 MAY HAVE.

11:49AM 7 Q. DID YOU COME TO UNDERSTAND FROM THOSE MATERIALS THAT THE  
11:49AM 8 THERANOS LIS DATABASE WAS BESPOKE?

11:50AM 9 A. THERE IS ONE OF THE FBI INTERVIEWS WHERE -- I DON'T  
11:50AM 10 REMEMBER -- IT MIGHT BE WHERE MR. CHUNG USES THAT TERM.

11:50AM 11 BUT I DON'T THINK THAT THE DATABASE SOFTWARE ITSELF AND  
11:50AM 12 ITS OPERATION WERE IN ANY WAY CUSTOM, WHICH IS WHAT I INTERPRET  
11:50AM 13 BESPOKE TO MEAN.

11:50AM 14 I BELIEVE THAT WAS IN REFERENCE TO THE FACT THAT IT WAS A  
11:50AM 15 PROPRIETARY SYSTEM DEVELOPED BY THERANOS FOR THERANOS'S USE,  
11:50AM 16 NOT A GENERAL SYSTEM THAT MR. CHUNG WOULD HAVE ENCOUNTERED OUT  
11:50AM 17 IN THE WORLD FROM A THIRD PARTY VENDOR.

11:50AM 18 Q. LET ME ASK YOU TO TAKE A LOOK AT TAB 5929 IN YOUR BINDER.

11:50AM 19 A. 5929. IS THAT IN THE FIRST VOLUME?

11:51AM 20 Q. YES, IN THE FIRST VOLUME.

11:51AM 21 A. OKAY. OKAY, I'M THERE.

11:51AM 22 Q. AND AT 5929, DO YOU SEE ANOTHER ONE OF THESE REPORTS THAT  
11:51AM 23 YOU REVIEWED IN REACHING YOUR OPINION?

11:51AM 24 A. YES, THIS IS ANOTHER FBI INTERVIEW REPORT.

11:51AM 25 Q. AND AT THE TOP OF PAGE 2, DO YOU SEE THAT THESE MATERIALS

11:51AM 1 INFORMED YOU OR RELAYED TO YOU THE STATEMENT THAT THE LIS  
11:51AM 2 DATABASE WAS A BESPOKE DATABASE DEVELOPED BY A GROUP OF  
11:51AM 3 SOFTWARE ENGINEERS WHO PREVIOUSLY WORKED AT THERANOS?

11:51AM 4 A. I DO SEE THAT, YES.

11:51AM 5 Q. AND THE WORD "BESPOKE" MEANS CUSTOM OR UNIQUE; ISN'T THAT  
11:52AM 6 RIGHT?

11:52AM 7 A. THAT'S HOW I INTERPRETED IT, YES.

11:52AM 8 Q. AND YOU EXPLAINED KIND OF WHAT YOU TOOK AWAY FROM THIS AND  
11:52AM 9 WHAT YOU UNDERSTOOD IT TO MEAN A MOMENT AGO; RIGHT?

11:52AM 10 A. YES.

11:52AM 11 Q. IN INTERPRETING THAT, YOU WERE MAKING SOME ASSUMPTIONS  
11:52AM 12 ABOUT WHAT THIS INDIVIDUAL MEANT WITH THAT LANGUAGE; IS THAT  
11:52AM 13 RIGHT?

11:52AM 14 A. WELL, I, I REVIEWED THE ENTIRE CONTEXT OF INTERVIEW, AS  
11:52AM 15 WELL AS OTHER INFORMATION FROM MR. CHUNG, AND I BELIEVE I CAME  
11:52AM 16 TO AN UNDERSTANDING OF WHAT HIS POSITION WAS OF THIS ITEM OF  
11:52AM 17 LIS DATABASE AND SYSTEM BEING CUSTOM.

11:52AM 18 Q. FROM YOUR EXPERIENCE WITH SQL DATABASES, DO YOU HAVE AN  
11:52AM 19 UNDERSTANDING OF THE WAYS IN WHICH THE BESPOKE OR CUSTOM  
11:52AM 20 DETAILS OF A DATABASE CAN MAKE IT IMPOSSIBLE TO MOVE OR  
11:52AM 21 DECONSTRUCT?

11:53AM 22 A. YEAH, THERE'S NO WAY THAT A CUSTOM DATABASE DESIGN, AND  
11:53AM 23 THE CUSTOM DATABASE IMPLEMENTATION IN A STANDARD MICROSOFT SQL  
11:53AM 24 SERVER SYSTEM WOULD PREVENT IT FROM BEING MOVED.

11:53AM 25 Q. SORRY, I DIDN'T MEAN TO TALK OVER YOU. FINISH YOUR

11:53AM 1 ANSWER.

11:53AM 2 A. I'M FINISHED.

11:53AM 3 Q. YOU SAID IN A STANDARD SQL SYSTEM.

11:53AM 4 ARE YOU ASSUMING THAT THERANOS WAS RUNNING A STANDARD SQL

11:53AM 5 SYSTEM?

11:53AM 6 A. ALL OF THE INFORMATION THAT I JUST REVIEWED IS THAT

11:53AM 7 THEY'RE RUNNING A STANDARD MICROSOFT SQL SERVER ENVIRONMENT

11:53AM 8 CONFIGURED AND SET UP PER MICROSOFT'S GUIDELINE.

11:53AM 9 Q. BUT, AGAIN, YOU NEVER ACTUALLY EXAMINED THE LIS SYSTEM IN

11:53AM 10 PERSON, DID YOU?

11:53AM 11 A. NO, I DID NOT.

11:53AM 12 Q. YOU'RE RELYING --

11:53AM 13 A. IT WAS DISASSEMBLED IN SOME STORAGE LOCATION, SO --

11:53AM 14 Q. SO YOU'RE RELYING ENTIRELY ON SECOND-HAND DESCRIPTIONS AND

11:54AM 15 THE MATERIALS THAT YOU REVIEWED TO UNDERSTAND IT; IS THAT FAIR?

11:54AM 16 A. I'M RELYING ON THE FACT THAT AT THE LEVEL OF DATA

11:54AM 17 RECOVERY, THE SQL SERVER SYSTEM FOR MICROSOFT SORT OF ONLY

11:54AM 18 WORKS ONE WAY, AND IT DOESN'T REALLY MATTER IF IT'S A CUSTOM

11:54AM 19 DATABASE THAT THAT SYSTEM IS HOSTING OR, SAY, A STANDARD ERP

11:54AM 20 DATABASE FROM SOME BUSINESS VENDOR.

11:54AM 21 THE RECOVERABILITY REMAINS THE SAME, IRREGARDLESS IF IT'S

11:54AM 22 A STANDARD VENDOR SUPPLY DATABASE OR A CUSTOM IN-HOUSE

11:54AM 23 DATABASE.

11:54AM 24 Q. AT LEAST THAT'S BEEN TRUE IN ALL OF THE DATABASES THAT YOU

11:54AM 25 HAD FIRST-HAND EXPERIENCE WITH; IS THAT RIGHT?

11:54AM 1 A. THAT'S RIGHT. OVER MY VAST EXPERIENCE IT'S ALWAYS BEEN  
11:54AM 2 THE CASE.

11:54AM 3 Q. BUT THAT FIRST-HAND EXPERIENCE DOES NOT INCLUDE THE  
11:54AM 4 THERANOS LIS; IS THAT FAIR?

11:54AM 5 A. THAT'S CORRECT, I HAVE NOT HAD ANY FIRST-HAND EXPERIENCE  
11:55AM 6 WITH THE THERANOS DATABASE.

11:55AM 7 Q. IF I COULD ASK YOU TO TURN TO 5927 IN YOUR BINDER.

11:55AM 8 A. 5927.

11:55AM 9 Q. AND IF YOU LOOK AT PAGE 3 -- WELL, FIRST OF ALL, IS 5927  
11:55AM 10 PART OF THE MATERIALS THAT YOU REVIEWED AND CONSIDERED IN  
11:55AM 11 REACHING YOUR OPINION?

11:55AM 12 A. YES, THIS IS ANOTHER FBI INTERVIEW REPORT.

11:55AM 13 Q. OKAY. AND ON PAGE 3 OF THIS REPORT AT THE TOP OF THE  
11:55AM 14 PAGE, IT WAS RELAYED TO YOU VIA THIS DOCUMENT THAT AN I.T.  
11:55AM 15 PROFESSIONAL TOLD SOMEONE AT THERANOS THAT THEY WOULD NOT BE  
11:55AM 16 ABLE TO GET ANYTHING OFF OF THE HARD DRIVES.

11:55AM 17 DID YOU CONSIDER THAT INFORMATION IN REACHING YOUR  
11:56AM 18 OPINION?

11:56AM 19 A. SEVERAL OF THE INTERVIEWS, INCLUDING THIS ONE, SORT OF  
11:56AM 20 MADE REFERENCE TO THAT.

11:56AM 21 AND SO I DID TAKE UP A PARTICULAR LINE OF INVESTIGATION TO  
11:56AM 22 MAKE SURE THAT THAT WAS JUST SORT OF ORDINARY CONCERNS OF WHEN  
11:56AM 23 YOU REMOVE HARD DRIVES FROM A SYSTEM AS OPPOSED TO SOME SORT OF  
11:56AM 24 HARD BARRIER THAT WOULD PREVENT RECOVERY.

11:56AM 25 Q. TURN TO TAB 5928 IF YOU WOULDN'T MIND.

11:56AM 1 A. YES.

11:56AM 2 Q. AND DO YOU SEE THERE ANOTHER ONE OF THESE REPORTS THAT YOU

11:56AM 3 REVIEWED AND CONSIDERED IN REACHING YOUR OPINION?

11:56AM 4 A. YES.

11:56AM 5 Q. AT THE TOP OF PAGE 3, DO YOU SEE INFORMATION THAT WAS

11:56AM 6 PROVIDED TO YOU INDICATING THAT IT WOULD NOT HAVE BEEN POSSIBLE

11:57AM 7 TO GET THE LIS DATABASE TO WORK AGAIN AFTER IT WAS TAKEN APART?

11:57AM 8 A. SO AT THE VERY TOP OF PAGE 3?

11:57AM 9 Q. YES.

11:57AM 10 A. I SEE HERE THAT MR. CHUNG DIDN'T THINK THAT YOU WOULD BE

11:57AM 11 ABLE TO RECOVER THE LIS DATABASE OR GET IT WORKING AGAIN.

11:57AM 12 Q. AND THAT CONFLICTS WITH YOUR OPINION; IS THAT CORRECT?

11:57AM 13 A. THAT'S CORRECT.

11:57AM 14 Q. DO YOU UNDERSTAND THAT MR. CHUNG WAS SOMEONE WHO HAD

11:57AM 15 FIRST-HAND EXPERIENCE WITH THE THERANOS LIS?

11:57AM 16 MR. BRECHER: OBJECTION. ASSUMES FACTS. LACKS

11:57AM 17 FOUNDATION.

11:57AM 18 THE COURT: DID YOU GAIN THAT KNOWLEDGE FROM THE --

11:57AM 19 I THINK, IS THAT YOUR QUESTION, WHETHER HE GAINED THAT

11:58AM 20 KNOWLEDGE THROUGH THE MATERIALS?

11:58AM 21 MR. BOSTIC: YES, YOUR HONOR. I'M ASKING SOLELY

11:58AM 22 ABOUT HIS UNDERSTANDING.

11:58AM 23 THE COURT: RIGHT.

11:58AM 24 YOU CAN ANSWER THE QUESTION.

11:58AM 25 THE WITNESS: MY UNDERSTANDING OF MR. CHUNG WAS THAT

11:58AM 1 HE WAS A CONTRACTOR BROUGHT IN TO DO A VERY SPECIFIC TASK, AND  
11:58AM 2 WAS NOT THERE VERY LONG, AND HAD VERY, VERY LITTLE KNOWLEDGE OF  
11:58AM 3 HOW THE LIS SYSTEM OR DATABASE WAS CONFIGURED OR WORKED.

11:58AM 4 BY MR. BOSTIC:

11:58AM 5 Q. LET ME TRY ASKING MY QUESTION AGAIN THOUGH.

11:58AM 6 A. SURE.

11:58AM 7 Q. MY QUESTION WAS, DO YOU UNDERSTAND THAT MR. CHUNG HAD  
11:58AM 8 FIRST-HAND EXPERIENCE WITH THE THERANOS LIS?

11:58AM 9 A. I'M DISAGREEING WITH THE CHARACTERIZATION THAT HE HAD  
11:58AM 10 FIRST-HAND EXPERIENCE.

11:58AM 11 HE WAS ON SITE. HE TOUCHED THE HARDWARE.

11:58AM 12 BUT I DON'T THINK HE HAD VERY MUCH EXPERIENCE WITH THE  
11:58AM 13 SYSTEM.

11:58AM 14 Q. FAIR TO SAY HE HAD MORE FIRST-HAND EXPERIENCE WITH THE  
11:58AM 15 SYSTEM THAN YOU DID; IS THAT CORRECT?

11:58AM 16 A. HE HAD MORE HANDS ON THAN I DID, ABSOLUTELY.

11:58AM 17 Q. IN REACHING YOUR ULTIMATE OPINION THAT THIS DATA COULD BE  
11:58AM 18 RECOVERED, YOU ULTIMATELY DISAGREED WITH THIS INFORMATION FROM  
11:59AM 19 MR. CHUNG; IS THAT FAIR?

11:59AM 20 A. TO THE EXTENT THAT HE DIDN'T THINK THAT IT WOULD BE  
11:59AM 21 POSSIBLE TO GET THE LIS DATABASE WORKING AGAIN, YES, I  
11:59AM 22 DISAGREED WITH THAT OPINION.

11:59AM 23 Q. YOU TESTIFIED EARLIER ABOUT YOUR UNDERSTANDING OF THE  
11:59AM 24 HARDWARE THAT WOULD BE USED TO RUN A TYPICAL SQL DATABASE.

11:59AM 25 DO YOU RECALL THAT?

11:59AM 1 A. YES.

11:59AM 2 Q. IN THE SAME DOCUMENT THAT YOU'RE LOOKING AT, IF I COULD

11:59AM 3 ASK YOU TO LOOK AT PAGE 2 -- SO THAT'S 5928, PAGE 2.

11:59AM 4 A. YES.

11:59AM 5 Q. AND IN THE MIDDLE OF THE BOTTOM PARAGRAPH, DO YOU SEE THAT

11:59AM 6 YOU WERE PROVIDED INFORMATION INDICATING THAT THE LIS WAS ON A

11:59AM 7 COMPLETELY DIFFERENT INFRASTRUCTURE CONSISTING OF HUNDREDS OF

11:59AM 8 SERVERS?

11:59AM 9 A. SO AT THE BOTTOM OF PAGE 2?

11:59AM 10 Q. YES, BOTTOM PARAGRAPH IN THE MIDDLE OF THAT PARAGRAPH.

12:00PM 11 A. SO BASED ON ALL OF THE MATERIAL THAT I REVIEWED --

12:00PM 12 Q. I'M SORRY. SIR, I'M JUST ASKING IF YOU WERE PROVIDED

12:00PM 13 INFORMATION INDICATING THAT --

12:00PM 14 A. OH, PROVIDED INFORMATION?

12:00PM 15 Q. YES. WERE YOU PROVIDED WITH INFORMATION INDICATING THAT

12:00PM 16 THE LIS WAS ON A COMPLETELY DIFFERENT INFRASTRUCTURE CONSISTING

12:00PM 17 OF HUNDREDS OF SERVERS?

12:00PM 18 A. I WAS PROVIDED INFORMATION THAT IT WAS ON A COMPLETELY

12:00PM 19 DIFFERENT INFRASTRUCTURE. HOWEVER, THIS APPEARS TO BE THE ONLY

12:00PM 20 PART OF THAT INFORMATION THAT WOULD SAY HUNDREDS OF SERVERS.

12:00PM 21 Q. AND THIS WAS PART OF THE INFORMATION THAT WAS PROVIDED TO

12:00PM 22 YOU SO YOU COULD REACH YOUR CONCLUSIONS; IS THAT CORRECT?

12:00PM 23 A. THAT IS CORRECT.

12:00PM 24 Q. IF I COULD ASK YOU TO TURN TO 5929, WHICH IS THE NEXT TAB.

12:01PM 25 A. THE NEXT ONE, THE FBI REPORT?

12:01PM 1 Q. YES. DO YOU HAVE THAT ONE IN FRONT OF YOU?

12:01PM 2 A. YES.

12:01PM 3 Q. AND AT 5929, I'LL ASK YOU TO LOOK AT PAGE 5. THERE'S A  
12:01PM 4 PARAGRAPH TOWARDS THE TOP OF THE PAGE THAT BEGINS "THE LAST  
12:01PM 5 DAY."

12:01PM 6 DO YOU SEE THAT?

12:01PM 7 A. YES, ON THE LAST DAY.

12:01PM 8 Q. YES. AND HALFWAY DOWN THAT PARAGRAPH, YOU WERE PROVIDED  
12:01PM 9 WITH INFORMATION THAT INDICATED THAT ONCE THE HARD DRIVES WERE  
12:01PM 10 TAKEN OUT OF THE LIS SERVERS, IF THEY WERE NOT TRACKED AS TO  
12:01PM 11 WHERE THEY CAME FROM, IT WOULD HAVE BEEN IMPOSSIBLE TO PUT THEM  
12:01PM 12 BACK TOGETHER.

12:01PM 13 DID YOU RECEIVE THAT INFORMATION?

12:01PM 14 A. I DID RECEIVE THAT INFORMATION, BUT I DISAGREE WITH IT.

12:01PM 15 Q. DID YOU ALSO RECEIVE THE INFORMATION FOLLOWING THAT, THAT  
12:02PM 16 EVEN IF THE HARD DRIVES WERE ALL LABELLED CORRECTLY, IT WOULD  
12:02PM 17 HAVE BEEN EXTREMELY DIFFICULT TO RECONSTRUCT THE DATABASE,  
12:02PM 18 BECAUSE IN ADDITION TO THE SERVERS, THERE ARE ALSO HUNDREDS OF  
12:02PM 19 NETWORK DEVICES WHICH WOULD HAVE TO BE CONNECTED CORRECTLY?

12:02PM 20 DID YOU RECEIVE THAT INFORMATION?

12:02PM 21 A. YES, I RECEIVED THAT INFORMATION.

12:02PM 22 Q. AND YOU DISAGREED WITH THAT INFORMATION AS WELL; CORRECT?

12:02PM 23 A. WELL, IN PARTICULAR, THE PART ABOUT NETWORK DEVICES IS NOT  
12:02PM 24 A FACTOR IN THE RECOVERY OF THE DATABASE ITSELF.

12:02PM 25 Q. SO AGAIN, JUST TO ANSWER MY QUESTION, YOU ULTIMATELY

12:02PM 1 DISAGREED WITH THE STATEMENT THAT WAS BEING RELAYED FROM THIS  
12:02PM 2 I.T. PROFESSIONAL?

12:02PM 3 A. THAT'S CORRECT.

12:02PM 4 Q. AND IN THIS CASE WE'RE TALKING ABOUT THE SAME I.T.  
12:02PM 5 PROFESSIONAL WHO HAD SOME HANDS-ON EXPERIENCE WITH THE LIS  
12:02PM 6 SYSTEM; IS THAT YOUR UNDERSTANDING?

12:02PM 7 A. SO, AGAIN, I DON'T THINK HE HAD HANDS-ON EXPERIENCE WITH  
12:02PM 8 THE LIS SYSTEM. I THINK HE TOUCHED THE HARDWARE, SO HE HAD  
12:03PM 9 HANDS-ON EXPERIENCE WITH THE EQUIPMENT THAT RAN THE LIS SYSTEM.

12:03PM 10 Q. AND TO BE CLEAR, WERE YOU PRESENT WHEN HE WAS DOING HIS  
12:03PM 11 WORK AT THERANOS?

12:03PM 12 A. NO, I WAS NOT.

12:03PM 13 Q. SO CAN YOU CONFIDENTLY TESTIFY ABOUT WHAT HE DID AND WHAT  
12:03PM 14 HE DIDN'T DO?

12:03PM 15 A. I CAN ONLY TESTIFY ABOUT THE MATERIALS AND WHAT THE  
12:03PM 16 MATERIALS THAT I REVIEWED DESCRIBE.

12:03PM 17 IN THOSE DESCRIPTIONS, THIS I.T. PROFESSIONAL WAS A  
12:03PM 18 CONTRACTOR BROUGHT ON TO THERANOS, VERY LIMITED AMOUNT OF TIME,  
12:03PM 19 TO DO A VERY SPECIFIC THING, WHICH WAS MOVE EQUIPMENT, AND HE  
12:03PM 20 SEEMED TO HAVE DONE THAT WITH DISPATCH.

12:03PM 21 BUT I DON'T THINK HE GOT INTO THE RUNNING OF THE SYSTEM OR  
12:03PM 22 HOW THEY WERE ORGANIZED.

12:03PM 23 Q. SO IN DECIDING TO BELIEVE OR DISBELIEVE THE INFORMATION  
12:03PM 24 THAT THIS I.T. SPECIALIST IS PROVIDING, YOU'RE WEIGHING -- OR  
12:03PM 25 YOU'RE INCORPORATING YOUR VIEW OF HOW INVOLVED HE WAS IN THE

12:04PM 1 LIS WORK AT THERANOS?

12:04PM 2 MR. BRECHER: OBJECTION. MISSTATES PRIOR TESTIMONY.

12:04PM 3 THE COURT: OVERRULED.

12:04PM 4 YOU CAN ANSWER THE QUESTION.

12:04PM 5 THE WITNESS: YES, I AM FACTORING INTO THE VARIOUS

12:04PM 6 INTERVIEWEES WHAT THEIR SCOPE AND EXPERIENCE AT THERANOS WAS AS

12:04PM 7 DESCRIBED IN THOSE INTERVIEWS.

12:04PM 8 BY MR. BOSTIC:

12:04PM 9 Q. TO THE EXTENT THAT YOU MIGHT BE WRONG ABOUT THOSE

12:04PM 10 ASSUMPTIONS, WOULD THAT CALL INTO QUESTION YOUR ULTIMATE

12:04PM 11 DECISION ABOUT WHETHER TO BELIEVE OR DISBELIEVE THESE OTHER

12:04PM 12 STATEMENTS?

12:04PM 13 A. NO. IT'S ALL A TECHNICAL MATTER FOR ME. ONCE THE DISK

12:04PM 14 DRIVES ARE RECOVERED AND THE EQUIPMENT IS RECOVERED, THEN YOU

12:04PM 15 CAN RECOVER THE DATABASE.

12:04PM 16 AND SO I DID INVESTIGATE STATEMENTS THAT SEEMED TO BE AT

12:05PM 17 ODDS WITH THAT JUST TO SEE IF THERE WAS ANY TECHNICAL -- OR

12:05PM 18 THERE WAS ANY REASON WHY THE PROFESSIONAL MIGHT HAVE THAT

12:05PM 19 OPINION, AND I COULDN'T FIND ANY.

12:05PM 20 Q. I'LL ASK YOU TO TURN TO PAGE 4 IN THAT SAME DOCUMENT,

12:05PM 21 5928, PAGE 4?

12:05PM 22 A. PAGE 4.

12:05PM 23 Q. AND YOU SEE THERE'S A SUBHEADING LABELLED NEETEK 746,

12:05PM 24 N-E-E-T-E-K?

12:05PM 25 MR. BRECHER: I'M SORRY, COUNSEL. WHICH EXHIBIT IS

12:05PM 1 THIS?

12:05PM 2 MR. BOSTIC: THIS IS 5928.

12:05PM 3 THE COURT: 5928.

12:05PM 4 THE WITNESS: OH, THE PREVIOUS ONE.

12:05PM 5 MR. BOSTIC: YES. SORRY.

12:05PM 6 Q. BACK TO 5928.

12:05PM 7 A. YES. I WAS SAYING I DIDN'T SEE ANY HEADINGS.

12:05PM 8 Q. SORRY. I'M NOT CONFUSING YOU ON PURPOSE.

12:05PM 9 A. AND WHICH PAGE?

12:05PM 10 Q. PAGE 4. AND DO YOU SEE THAT HEADING IN THE MIDDLE OF

12:06PM 11 PAGE 746?

12:06PM 12 A. YES, 746, I'VE GOT IT.

12:06PM 13 Q. AND BELOW THAT, DO YOU SEE THAT YOU WERE PROVIDED

12:06PM 14 INFORMATION FROM THE SAME SOURCE INDICATING THAT IT DID NOT

12:06PM 15 MATTER HOW MANY COPIES THEY MADE OF THIS LIS DATABASE BECAUSE

12:06PM 16 THEY WOULD NOT BE ABLE TO RESTORE THE DATA WITHOUT A KEY?

12:06PM 17 WERE YOU PROVIDED THAT INFORMATION?

12:06PM 18 A. YES, I WAS PROVIDED THAT INFORMATION.

12:06PM 19 I THINK THIS IS REFERRING TO THAT ENCRYPTION KEY FOR THE

12:06PM 20 BACKUP, THOUGH, THAT WE DISCUSSED EARLIER.

12:06PM 21 Q. LET'S GO TO 5938.

12:06PM 22 A. 5938.

12:06PM 23 Q. AND AT 5938, DO YOU SEE ANOTHER REPORT FROM A DIFFERENT

12:06PM 24 I.T. PROFESSIONAL THAT YOU WOULD HAVE CONSIDERED AND REVIEWED

12:07PM 25 IN CONNECTION WITH YOUR OPINION?

12:07PM 1

A. YES.

12:07PM 2

Q. AND IF YOU LOOK AT PAGE 3 OF THAT DOCUMENT, DO YOU SEE IN THE SECOND TO TOP PARAGRAPH, AT THE BOTTOM OF THAT PARAGRAPH, THAT YOU RECEIVED INFORMATION INDICATING THAT IF THERANOS TOOK THE LIS APART, THEY WOULD NOT BE ABLE TO ACCESS IT AGAIN BECAUSE THEN THE ENCRYPTION KEY WOULD BE LOST?

12:07PM 7

WERE YOU PROVIDED THAT INFORMATION?

12:07PM 8

A. YES, I WAS.

12:07PM 9

Q. AND WERE YOU PROVIDED THE FOLLOW-UP INFORMATION THAT THE ENCRYPTION KEY WAS LOCATED ON A DISK ARRAY WHICH HAD A LOT OF PIECES, AND WHEN THEY TOOK THE DISK ARRAY APART, IT WOULD HAVE DESTROYED THE ENCRYPTION KEY? WERE YOU PROVIDED THAT INFORMATION?

12:07PM 14

A. YES, I WAS.

12:07PM 15

Q. DID YOU DISAGREE WITH THAT INFORMATION FROM THAT OTHER I.T. PROFESSIONAL?

12:07PM 16

12:07PM 17

A. I TOOK THAT STATEMENT VERY SERIOUSLY AND INVESTIGATED THEM EXTENSIVELY AND FOUND THAT THERE'S NO TECHNICAL BASIS FOR THAT STATEMENT.

12:07PM 18

12:07PM 19

12:08PM 20

SO TO THE EXTENT THIS PROFESSIONAL IS REFERRING TO THE FEASIBILITY OF THE RECOVERY OF THE LIS DATABASE, IT'S INCORRECT.

12:08PM 21

12:08PM 22

12:08PM 23

HE MAY HAVE BEEN TALKING ABOUT SOMETHING ELSE.

12:08PM 24

12:08PM 25

BUT I TOOK THESE STATEMENTS VERY SERIOUSLY AND INVESTIGATED THEM VERY EXTENSIVELY AND THERE'S NO TECHNICAL

12:08PM 1 BASIS FOR THEM.

12:08PM 2 Q. YOU SAID YOU INVESTIGATED THEM THOROUGHLY. YOUR  
12:08PM 3 INVESTIGATION, THOUGH, DIDN'T INCLUDE ANY REVIEW OF THE LIS  
12:08PM 4 ORIGINAL HARDWARE; IS THAT CORRECT?

12:08PM 5 A. THAT'S RIGHT. THE HARDWARE, WE HAVE THE INVENTORY SO YOU  
12:08PM 6 CAN GO LOOK UP THE EXACT MODELS AND LOOK UP THE TECHNICAL  
12:08PM 7 INFORMATION INDEPENDENT OF ACTUALLY INSPECTING THE PHYSICAL  
12:08PM 8 UNITS THEMSELVES.

12:08PM 9 Q. THAT THOROUGH INVESTIGATION YOU REFERENCED, DID IT INCLUDE  
12:08PM 10 SPEAKING TO ANY OF THE I.T. PROFESSIONALS WHOSE STATEMENTS  
12:08PM 11 YOU'VE READ?

12:08PM 12 A. I DIDN'T SPEAK TO ANY, ANY OF THE PROFESSIONALS.

12:08PM 13 Q. ULTIMATELY WHEN YOU READ THIS INFORMATION THAT WAS  
12:09PM 14 PROVIDED FOR YOUR REVIEW, YOU DISREGARDED INFORMATION THAT WAS  
12:09PM 15 INCONSISTENT WITH YOUR ULTIMATE CONCLUSION.

12:09PM 16 IS THAT FAIR TO SAY?

12:09PM 17 A. NO. I WAS PUTTING TOGETHER A JIGSAW PUZZLE FROM ALL OF  
12:09PM 18 THE INFORMATION, SO I WAS CROSS-REFERENCING EVERYTHING.

12:09PM 19 BUT IF THE INFORMATION, AS IN THESE INTERVIEWS, OTHER  
12:09PM 20 DOCUMENTS PROVIDED, AND THE PUBLIC INFORMATION AND DETERMINING  
12:09PM 21 WHAT ACTUALLY HOOKS TOGETHER AND MAKES THE COMPLETE PICTURE.

12:09PM 22 SO I DIDN'T DISREGARD THEM WHERE THE STATEMENT SEEMED  
12:09PM 23 IMPLAUSIBLE OR PROBABLY, YOU KNOW, CONSTRUCTED TECHNICALLY,  
12:09PM 24 LIKE THAT DIDN'T SOUND RIGHT, I INVESTIGATED THEM EXTENSIVELY  
12:09PM 25 TO SEE IF PERHAPS THERE WAS SOME BASIS.

12:09PM 1 AND TO THE EXTENT THAT I'M DISAGREEING WITH ANY OF THESE  
12:10PM 2 MATERIALS IN THEIR INTERVIEW STATEMENTS, IT'S BECAUSE I FOUND  
12:10PM 3 NO TECHNICAL BASIS TO SUPPORT THEM.

12:10PM 4 Q. AND DO YOU FEEL THAT YOU INVESTIGATED THOSE STATEMENTS AS  
12:10PM 5 THOROUGHLY AS YOU COULD GIVEN THE LIMITATIONS THAT YOU DIDN'T  
12:10PM 6 HAVE ACCESS TO ANY OF THE ORIGINAL HARDWARE OR THE INDIVIDUALS  
12:10PM 7 WHO HAD THAT KNOWLEDGE?

12:10PM 8 A. YES. SO I DIDN'T FEEL THAT ACCESS TO THE INDIVIDUALS OR  
12:10PM 9 THE ACTUAL HARDWARE WAS NECESSARY IN ORDER TO REACH THE  
12:10PM 10 CONCLUSIONS THAT I REACHED.

12:10PM 11 Q. DID YOU CONCLUDE, AS PART OF YOUR REVIEW, THAT  
12:10PM 12 RECONSTRUCTING THE LIS WOULD HAVE BEEN MORE DIFFICULT ONCE THE  
12:10PM 13 LIS SYSTEM HARDWARE WAS RETURNED?

12:10PM 14 A. SO THERE ARE TWO ASPECTS TO THAT FROM THE MATERIAL THAT I  
12:10PM 15 REVIEWED. THE MORE LIKELY SCENARIO IS THAT THE LIS PRODUCTION  
12:10PM 16 HARDWARE WAS NEVER RETURNED, OR AT LEAST THERE'S NOTHING TO SAY  
12:11PM 17 THAT IT EVER LEFT ITS STORAGE LOCATION.

12:11PM 18 THERE IS ANOTHER SCENARIO IN WHICH IT IS POSSIBLE THAT THE  
12:11PM 19 EQUIPMENT WAS RETURNED TO THE PERSON HOLDING THE LEASE, THE  
12:11PM 20 LEASE HOLDER, MAYBE A YEAR AFTER DISASSEMBLY, AND I DID  
12:11PM 21 CONSIDER THAT SCENARIO AND CONCLUDED THAT IT'S EASY ENOUGH TO  
12:11PM 22 GET REPLACEMENT EQUIPMENT ON THE REFURBISHED MARKET, STANDARD  
12:11PM 23 PRACTICE.

12:11PM 24 AND SO IF THE EQUIPMENT WERE NOT AVAILABLE, YOU COULD  
12:11PM 25 OBTAIN THE EXACT SAME MODELS AND EQUIPMENT FROM THE REFURBISHED

12:11PM 1 MARKET.

12:11PM 2 AND I ACTUALLY INVESTIGATED IT AT THE TIME, LAST FALL, TO  
12:11PM 3 SEE IF SUCH -- THOSE TYPES OF EQUIPMENT APPEARED TO BE  
12:11PM 4 AVAILABLE, AND THEY'RE GENERALLY AVAILABLE IN THAT MARKET.

12:11PM 5 Q. OKAY. SO A COUPLE OF THINGS.

12:12PM 6 FIRST, DO YOU HAVE ANY PERSONAL KNOWLEDGE AS TO WHETHER  
12:12PM 7 THE ORIGINAL EQUIPMENT WAS ACTUALLY RETURNED FROM THERANOS OR  
12:12PM 8 NOT? DO YOU PERSONALLY KNOW THAT?

12:12PM 9 A. ALL OF THE MATERIALS THAT I'VE REVIEWED DON'T INDICATE  
12:12PM 10 THAT, AND I CERTAINLY HAVE NO PERSONAL KNOWLEDGE OF WHERE THAT  
12:12PM 11 EQUIPMENT WENT PAST THE STORAGE LOCKER.

12:12PM 12 Q. DO YOU BELIEVE, THOUGH, OR DO YOU AGREE THAT RECOVERING  
12:12PM 13 THE LIS DATA WOULD BE MORE DIFFICULT IF THAT EQUIPMENT HAD BEEN  
12:12PM 14 RETURNED?

12:12PM 15 A. YES. AS I JUST STATED, YOU WOULD HAVE TO GET --  
12:12PM 16 POTENTIALLY YOU WOULD HAVE TO GET REPLACEMENT EQUIPMENT OR USE  
12:12PM 17 MORE COMPUTER FORENSIC TECHNIQUES TO RECOVER IT IN THIS CASE.

12:12PM 18 MR. BOSTIC: SO, YOUR HONOR, I'M ABOUT TO SWITCH  
12:12PM 19 TOPICS. I'M NOT SURE WHEN THE COURT WANTED TO TAKE A BREAK.

12:12PM 20 THE COURT: I THOUGHT EARLIER WE WOULD BREAK AT NOON  
12:13PM 21 FOR ABOUT -- I THINK WE'RE BREAKING TODAY AT 2:00 O'CLOCK, 2:00  
12:13PM 22 P.M., LADIES AND GENTLEMEN. I BELIEVE THAT'S STILL CORRECT.  
12:13PM 23 MY RECOLLECTION IS THAT SOME JURORS HAD SOME APPOINTMENTS.

12:13PM 24 SO WHY DON'T WE TAKE A BREAK NOW?

12:13PM 25 COULD WE TAKE 20 MINUTES? LET'S TAKE ABOUT 20,

12:13PM 1 25 MINUTES, AND THEN WE'LL RESUME.

12:13PM 2 YOU CAN STAND DOWN, SIR. THANK YOU.

12:13PM 3 (RECESS FROM 12:13 P.M. UNTIL 12:40 P.M.)

12:40PM 4 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

12:40PM 5 ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

12:40PM 6 MR. BOSTIC.

12:40PM 7 MR. BOSTIC: THANK YOU, YOUR HONOR.

12:40PM 8 Q. MR. SONNIER, WELCOME BACK.

12:40PM 9 CAN I ASK YOU TO LOOK AT TAB 5897 IN YOUR BINDER, PLEASE.

12:40PM 10 A. DID YOU SAY 5857?

12:40PM 11 Q. 5897.

12:40PM 12 A. OKAY.

12:40PM 13 Q. AND YOU TESTIFIED EARLIER THAT YOU'RE AWARE THAT A COPY,

12:40PM 14 OR RATHER A BACKUP, OF THE THERANOS LIS WAS PROVIDED TO THE

12:40PM 15 GOVERNMENT?

12:40PM 16 A. THAT IS CORRECT.

12:40PM 17 Q. AND IS IT YOUR UNDERSTANDING THAT THAT HAPPENED IN LATE

12:40PM 18 AUGUST 2018?

12:41PM 19 A. YES.

12:41PM 20 Q. AND AT 5897, DO YOU SEE AN EMAIL BETWEEN INDIVIDUALS AT

12:41PM 21 THERANOS AND AN EMAIL BETWEEN INDIVIDUALS AT A LAW FIRM CALLED

12:41PM 22 WILMER HALE IN LATE AUGUST 2018?

12:41PM 23 A. I DO SEE THE EMAIL, AND I DO RECOGNIZE THE FROM AS BEING

12:41PM 24 SOMEONE FROM WILMER HALE.

12:41PM 25 I'M NOT SURE I RECOGNIZE ANY OF THE NAMES ON THE TO LINE.

12:41PM 1 Q. DO YOU SEE DOMAIN NAMES FROM THERANOS THERE AS WELL?

12:41PM 2 A. I GUESS TO -- OKAY. AS YOU GET THROUGH THE THREAD, I DO

12:41PM 3 SEE SOME THERANOS, SOME THERANOS DOMAIN NAMES.

12:41PM 4 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5897.

12:42PM 5 MR. BRECHER: OBJECTION. AUTHENTICITY.

12:42PM 6 THE COURT: MR. BOSTIC.

12:42PM 7 MR. BOSTIC: SO, YOUR HONOR, I BELIEVE THIS SHOULD

12:42PM 8 BE AUTHENTIC ON ITS FACE. I'LL POINT OUT THE BATES NUMBER ON

12:42PM 9 THE BOTTOM INDICATING THAT THIS WAS PRODUCED BY WILMER HALE.

12:42PM 10 I ALSO HAVE THE COVER LETTERS FOR THAT PRODUCTION IF THE

12:42PM 11 COURT AND THE DEFENSE WOULD LIKE TO REVIEW THEM.

12:42PM 12 THE COURT: HAVE YOU SEEN THE COVER LETTERS?

12:42PM 13 MR. BRECHER: NOT RECENTLY.

12:42PM 14 THE COURT: WOULD YOU LIKE TO LOOK AT THOSE NOW?

12:42PM 15 MR. BRECHER: THAT WOULD BE HELPFUL.

12:42PM 16 THE COURT: SURE.

12:42PM 17 MR. BOSTIC: MAY I PASS UP A COPY, YOUR HONOR?

12:42PM 18 THE COURT: THANK YOU.

12:42PM 19 MR. BOSTIC: (HANDING.)

12:42PM 20 (PAUSE IN PROCEEDINGS.)

12:43PM 21 THE COURT: ANYTHING FURTHER?

12:43PM 22 MR. BRECHER: NO, YOUR HONOR.

12:43PM 23 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

12:43PM 24 (GOVERNMENT'S EXHIBIT 5897 WAS RECEIVED IN EVIDENCE.)

12:43PM 25 BY MR. BOSTIC:

12:43PM 1 Q. OKAY. SO, MR. SONNIER, DO YOU SEE ON THE SCREEN IN FRONT  
12:43PM 2 OF YOU THIS EMAIL CHAIN FROM LATE AUGUST OF 2018?

12:43PM 3 A. YES.

12:43PM 4 Q. AND LET'S LOOK AT THE FIRST EMAIL, AND IF WE CAN ZOOM IN  
12:43PM 5 THERE.

12:43PM 6 DO YOU SEE THAT IT BEGINS WITH A MESSAGE FROM SOMEONE  
12:43PM 7 NAMED DAVID TAYLOR?

12:43PM 8 A. YES, I SEE THAT.

12:43PM 9 Q. DO YOU HAVE AN UNDERSTANDING FROM YOUR REVIEW OF DOCUMENTS  
12:43PM 10 THAT DAVID TAYLOR WAS THE CEO AT THERANOS AT THE TIME?

12:43PM 11 A. I'M NOT SURE I KNEW HE WAS THE CEO, BUT I HAD A FEELING  
12:43PM 12 THAT HE WAS THE ONE CALLING THE SHOTS AT THE TOP.

12:43PM 13 Q. DO YOU SEE THAT HE EMAILS A GROUP OF PEOPLE, OTHERS AT  
12:43PM 14 THERANOS, AND A LAWYER AT WILMER HALE, AND HE SAYS, "CAN THIS  
12:43PM 15 GROUP CONVENE FOR A CALL AS SOON AS POSSIBLE, IDEALLY THIS  
12:43PM 16 AFTERNOON."

12:44PM 17 DO YOU SEE THAT?

12:44PM 18 A. YES, I SEE THAT.

12:44PM 19 Q. AND HE SAYS, "TO HASH OUT WHAT WE STILL NEED FROM LIS AND  
12:44PM 20 WHAT WE NEED TO DO TO GET IT, GIVEN THAT THE SYSTEM WILL BE PUT  
12:44PM 21 INTO STORAGE THIS FRIDAY AND MAY THEREAFTER BE VERY DIFFICULT  
12:44PM 22 TO RESUSCITATE?"

12:44PM 23 DO YOU SEE THAT?

12:44PM 24 A. YES, I SEE THAT.

12:44PM 25 Q. WHEN YOU WERE REACHING YOUR OPINION AND REVIEWING

12:44PM 1 DOCUMENTS, WERE YOU AWARE THAT MR. TAYLOR UNDERSTOOD IN LATE  
12:44PM 2 AUGUST 2018 THAT PUTTING THE LIS INTO STORAGE WOULD MAKE IT  
12:44PM 3 VERY DIFFICULT TO RESUSCITATE?

12:44PM 4 A. I DON'T RECALL IF I SPECIFICALLY KNEW THAT MR. TAYLOR KNEW  
12:44PM 5 THIS, BUT I CERTAINLY WAS AWARE THAT THERE WERE CERTAIN PEOPLE  
12:44PM 6 AT THERANOS THAT WERE AWARE OF THAT.

12:44PM 7 Q. OKAY. WE CAN SET THAT ASIDE.

12:44PM 8 AND THIS WAS AROUND THE SAME TIME THAT YOU UNDERSTOOD THE  
12:45PM 9 GOVERNMENT WAS PROVIDED WITH A BACKUP OF THE LIS; IS THAT  
12:45PM 10 CORRECT?

12:45PM 11 A. YEAH, THIS MAY HAVE BEEN A LITTLE BIT BEFORE THE BACKUP  
12:45PM 12 ACTUALLY GOT TO THE GOVERNMENT, BUT --

12:45PM 13 Q. IF I COULD ASK YOU TO JUST LOOK BRIEFLY AT 5895.

12:45PM 14 A. 5895. OKAY, I'VE GOT THAT.

12:45PM 15 Q. TAKE A MOMENT TO LOOK AT THAT AND LET ME KNOW IF THAT --  
12:45PM 16 TAKE A MOMENT TO REVIEW IT, AND LET ME KNOW WHEN YOU'RE DONE  
12:45PM 17 WITH THAT FIRST PAGE.

12:45PM 18 A. OKAY. I'VE READ THE FIRST PAGE.

12:45PM 19 Q. DOES THAT REFRESH YOUR RECOLLECTION THAT THE GOVERNMENT  
12:45PM 20 WAS PROVIDED WITH ITS COPY OF THE LIS JUST THE DAY BEFORE THE  
12:45PM 21 EMAIL THAT WE JUST LOOKED AT?

12:46PM 22 A. SO I HAD LOOKED AT THIS, AND IT DOES SAY THAT, LIKE, IT  
12:46PM 23 WAS SENT THAT DAY. BUT I DON'T GET -- I DIDN'T SEE ANY  
12:46PM 24 CONFIRMATION UNTIL THE 29TH.

12:46PM 25 Q. AS TO THE GOVERNMENT'S RECEIPT OF THE LIS?

12:46PM 1 A. THAT'S CORRECT.

12:46PM 2 Q. OKAY. AND THAT WAS ALL WITHIN DAYS OF THE TIME WHEN,

12:46PM 3 ACCORDING TO THAT EMAIL THAT WE JUST SAW, THERANOS WAS GOING TO

12:46PM 4 PUT THE ORIGINAL IN STORAGE; IS THAT CORRECT?

12:46PM 5 A. YES. AFTER ALL OF THAT, AND EVEN THAT OTHER EMAIL, SORT

12:46PM 6 OF BASICALLY THE END OF THAT WEEK IS WHEN THE SYSTEM WAS

12:46PM 7 DISASSEMBLED AND PUT INTO STORAGE.

12:46PM 8 Q. TURN NEXT IF YOU WOULD TO 5940. IT SHOULD BE TOWARDS THE

12:46PM 9 BACK OF YOUR BINDER.

12:46PM 10 A. 5940.

12:46PM 11 Q. ACTUALLY MAKE THAT 5943 AT THE VERY BACK.

12:47PM 12 A. 5943.

12:47PM 13 Q. AND AT 5943, DO YOU SEE A CONTINUATION OF THE EMAIL AT THE

12:47PM 14 U.S. ATTORNEY'S OFFICE THAT YOU REVIEWED ON DIRECT WITH

12:47PM 15 MR. BRECHER?

12:47PM 16 A. I BELIEVE THE EMAIL THAT WE PREVIOUSLY LOOKED AT IS THE

12:47PM 17 NEXT ONE IN THE THREAD, AND SO I GUESS THIS IS A FOLLOWUP TO

12:47PM 18 THAT.

12:47PM 19 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5943.

12:47PM 20 MR. BRECHER: NO OBJECTION, YOUR HONOR.

12:47PM 21 THE COURT: IT'S ADMITTED.

12:47PM 22 MR. BRECHER: YOUR HONOR, IF THE WITNESS COULD MOVE

12:47PM 23 THE MICROPHONE A LITTLE BIT CLOSER, THAT WOULD BE HELPFUL.

12:47PM 24 THE WITNESS: SORRY. I KNOCKED IT OUT OF THE WAY

12:47PM 25 WITH THE BINDER.

12:47PM 1 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

12:47PM 2 (GOVERNMENT'S EXHIBIT 5943 WAS RECEIVED IN EVIDENCE.)

12:47PM 3 BY MR. BOSTIC:

12:47PM 4 Q. LET'S ZOOM IN ON THE TOP HEAR.

12:48PM 5 AND DO YOU SEE THAT THIS IS COMMUNICATION BETWEEN THE SAME  
12:48PM 6 INDIVIDUALS WHO WERE PREVIOUSLY DISCUSSING POSSIBLE WAYS TO  
12:48PM 7 HANDLE THIS COPY OF THE LIS?

12:48PM 8 A. I'M JUST CHECKING TO MAKE SURE.

12:48PM 9 YEAH, IT APPEARS TO BE THE SAME PEOPLE.

12:48PM 10 Q. AND DO YOU SEE THAT THIS MESSAGE IS FROM SOMEONE NAMED  
12:48PM 11 LAKISHA HOLLIMAN WHO WRITES BACK TO SUTTON PEIRCE AT THE U.S.  
12:48PM 12 ATTORNEY'S OFFICE, AND CC'D ON THE EMAIL ARE THE PROSECUTORS IN  
12:48PM 13 THE CASE, MYSELF, MR. SCHENK, AND MR. LEACH.

12:48PM 14 DO YOU SEE THAT?

12:48PM 15 A. YES.

12:48PM 16 Q. AND THIS READS, "I HAD A MEETING WITH THE AUSA'S ON THE  
12:48PM 17 CASE REGARDING OUR OPTIONS AND WE ALL DECIDED TO DO THE  
12:48PM 18 FOLLOWING."

12:48PM 19 DO YOU SEE THAT?

12:48PM 20 A. YES, I DO.

12:48PM 21 Q. AND THERE ARE TWO BULLET POINTS SELECTED THERE.

12:48PM 22 "PUSH BACK ON DEFENSE AND SEE IF THEY CAN BE PERSUADED TO  
12:48PM 23 PRODUCE THIS IN A MANNER THAT CAN BE VIEWED AND PROCESSED IN A  
12:48PM 24 STANDARD WAY RATHER THAN AN UNSPECIFIED ARCHIVE FORMAT THAT WE  
12:49PM 25 CAN'T ACCESS."

12:49PM 1 DO YOU SEE THAT OPTION?

12:49PM 2 A. YES.

12:49PM 3 Q. AND THE OTHER OPTION, CHECK WITH THE FBI TO SEE IF THEY  
12:49PM 4 CAN PROCESS THE DATABASE; CORRECT?

12:49PM 5 A. YES.

12:49PM 6 Q. AND DO YOU HAVE ANY FIRST-HAND KNOWLEDGE OF THE STEPS THAT  
12:49PM 7 THE GOVERNMENT TEAM TOOK TO TRY TO GAIN ACCESS TO THIS DATABASE  
12:49PM 8 AFTER THIS DATE?

12:49PM 9 A. DO YOU MEAN THE COPY OR THE DATABASE ORIGINAL?

12:49PM 10 Q. LET ME ASK JUST GENERALLY ABOUT THE DATABASE INFORMATION.

12:49PM 11 A. OKAY.

12:49PM 12 Q. DO YOU HAVE ANY KNOWLEDGE OF ANY EFFORTS THAT THE  
12:49PM 13 GOVERNMENT TOOK TO TRY TO GAIN ACCESS TO THAT INFORMATION IN  
12:49PM 14 OCTOBER OF 2018 OR LATER?

12:49PM 15 A. I'VE SEEN SOME MATERIAL THAT INDICATES THAT THERE IS  
12:49PM 16 FOLLOW-UP ABOUT GETTING THIS INFORMATION. I'M NOT SURE HOW  
12:50PM 17 MUCH PAST OCTOBER 30TH IT GOES, IF IT EVEN GOES PAST THAT,  
12:50PM 18 BUT --

12:50PM 19 Q. OKAY. LET ME HAVE YOU LOOK AT 5917.

12:50PM 20 A. OKAY. 5917. I'VE GOT IT.

12:50PM 21 Q. OKAY. AND DO YOU SEE THAT'S AN EMAIL CHAIN BETWEEN MYSELF  
12:50PM 22 AND SOMEONE NAMED STEPHEN O'NEILL AT A LAW FIRM CALLED DORSEY?

12:50PM 23 A. OKAY.

12:50PM 24 Q. DO YOU UNDERSTAND THAT THERANOS'S ASSETS WERE HANDED OFF  
12:50PM 25 TO AN ASSIGNEE?

12:50PM 1 A. YES, I UNDERSTAND THAT.

12:50PM 2 Q. AND AS PART OF YOUR REVIEW, DID YOU COME TO UNDERSTAND  
12:50PM 3 THAT STEPHEN O'NEILL AT DORSEY WAS A REPRESENTATIVE OF THAT  
12:51PM 4 ASSIGNEE?

12:51PM 5 A. I'M NOT FAMILIAR. I DON'T KNOW STEPHEN O'NEILL EXACTLY.  
12:51PM 6 I HAVE HEARD THE FIRM DORSEY BEING THE ASSIGNEE'S FIRM.

12:51PM 7 Q. AND DO YOU SEE THAT THIS EMAIL IS FROM MARCH OF 2019?

12:51PM 8 A. YES, MARCH 25TH.

12:51PM 9 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5917.

12:51PM 10 MR. BRECHER: OBJECTION. 801, YOUR HONOR. THERE  
12:51PM 11 ARE MULTIPLE LAYERS OF HEARSAY IN HERE AND I'M SEEING  
12:51PM 12 CONVERSATIONS WITHIN CONVERSATIONS.

12:51PM 13 I ALSO HAVE 403 CONCERNS ABOUT THE DOUBLE OR TRIPLE  
12:51PM 14 HEARSAY IN THE SECOND EMAIL DOWN.

12:51PM 15 MR. BOSTIC: SO, YOUR HONOR, EMAILS HAVE COME IN AND  
12:51PM 16 EXHIBITS HAVE COME IN TO SHOW NOTICE TO THE GOVERNMENT ON THIS  
12:51PM 17 SPECIFIC TOPIC, WHAT THE GOVERNMENT KNEW AND WHAT INFORMATION  
12:51PM 18 WAS BEING PROVIDED.

12:51PM 19 THIS SHOULD BE ADMITTED FOR THE SAME REASON. I'M NOT  
12:51PM 20 COMING IN FOR THE TRUTH, BUT RATHER TO SHOW WHAT INFORMATION  
12:51PM 21 WAS GIVEN TO THE GOVERNMENT AND WHEN.

12:51PM 22 THE COURT: THANK YOU.

12:51PM 23 IT'S BEING ADMITTED THEN FOR NOTICE ONLY, NOT FOR THE  
12:52PM 24 TRUTH OF THE MATTER ASSERTED.

12:52PM 25 MR. BRECHER: YES, YOUR HONOR. I'M SORRY.

12:52PM 1 THE COURT: NO, GO AHEAD.

12:52PM 2 MR. BRECHER: THAT CURES THE HEARSAY ISSUE, OR  
12:52PM 3 MIGHT.

12:52PM 4 BUT I STILL HAVE THE 403 CONCERNS ABOUT THE SECOND EMAIL,  
12:52PM 5 ESPECIALLY GIVEN THAT THERE'S NO FOLLOWUP ON THIS AND THERE'S  
12:52PM 6 NO CONTEXT. I THINK THAT WOULD BE MISLEADING HERE. THERE'S NO  
12:52PM 7 FOUNDATION FOR IT.

12:52PM 8 I'M REFERRING TO THE EMAIL, THURSDAY MARCH 21ST, 2019, AT  
12:52PM 9 5:50 P.M.

12:52PM 10 (PAUSE IN PROCEEDINGS.)

12:52PM 11 THE COURT: MR. BOSTIC.

12:52PM 12 MR. BOSTIC: YOUR HONOR, I THINK THE ENTIRE EMAIL IS  
12:52PM 13 ADMISSIBLE FOR NOTICE. THAT PORTION THAT MR. BRECHER IS  
12:52PM 14 REFERENCING STILL DOES CONSTITUTE NOTICE THAT THE GOVERNMENT  
12:52PM 15 RECEIVED.

12:52PM 16 IF THE COURT DISAGREES, I COULD REDACT.

12:52PM 17 THE COURT: ARE YOU ASKING -- THANK YOU. THE LAST  
12:53PM 18 PAGE IS PAGE 3. IT SAYS PLACE HOLDER.

12:53PM 19 IS THAT PART OF YOUR ADMISSION AS WELL?

12:53PM 20 MR. BOSTIC: NO, YOUR HONOR. I CAN ADMIT JUST THE  
12:53PM 21 FIRST TWO PAGES.

12:53PM 22 THE COURT: ALL RIGHT. THANK YOU.

12:53PM 23 MR. BRECHER: AND, YOUR HONOR, IF WE CAN REDACT THE  
12:53PM 24 FIRST PORTION OF THAT MIDDLE EMAIL UP TO "HERE'S HOW DAVID."  
12:53PM 25 I'M FINE WITH "HERE'S HOW DAVID." I'M FINE.

12:53PM 1 BUT I THINK THE REST OF IT THERE ARE 403 CONCERNS.

12:53PM 2 THE COURT: MR. BOSTIC.

12:53PM 3 MR. BOSTIC: I DISAGREE, YOUR HONOR. I THINK THIS  
12:53PM 4 IS INFORMATION THAT THE GOVERNMENT RECEIVED DURING THE  
12:53PM 5 INVESTIGATION. IT'S RELEVANT TO ITS INVESTIGATION AND THE  
12:53PM 6 STEPS THAT IT TOOK SUBSEQUENTLY.

12:53PM 7 MR. BRECHER: RESPECTFULLY, THERE'S NO EVIDENCE THAT  
12:53PM 8 THE GOVERNMENT TOOK STEPS BASED ON THAT INFORMATION. THERE  
12:53PM 9 CERTAINLY IS NO FOUNDATION FOR THAT.

12:53PM 10 THE COURT: WELL, THERE'S BEEN TESTIMONY ABOUT THE  
12:54PM 11 LIS AND ENCRYPTION, AND UNDER THE 403 ANALYSIS, THIS IS  
12:54PM 12 PROBATIVE AS TO THAT ANALYSIS AND THE ENCRYPTION AND ABOUT  
12:54PM 13 THAT.

12:54PM 14 MR. BRECHER: WELL, YOUR HONOR, I THINK THAT WOULD  
12:54PM 15 HAVE TO ASSUME THE DOCUMENT'S ADMISSIBLE FOR ITS TRUTH.

12:54PM 16 THE COURT: WELL, IT'S GOING FOR NOTICE ONLY, I  
12:54PM 17 THINK.

12:54PM 18 IS THAT RIGHT, MR. BOSTIC?

12:54PM 19 MR. BOSTIC: YES, YOUR HONOR.

12:54PM 20 THE COURT: THAT'S RIGHT. I'M GOING TO ADMIT IT.  
12:54PM 21 THE OBJECTION IS OVERRULED.

12:54PM 22 BUT, LADIES AND GENTLEMEN, THIS IS NOT OFFERED FOR THE  
12:54PM 23 TRUTH OF THE MATTER ASSERTED IN THIS EMAIL. IT ONLY GOES AS TO  
12:54PM 24 THE ISSUE OF NOTICE OR INFORMATION IN REGARDS TO THIS DATABASE  
12:54PM 25 AND THE GOVERNMENT'S CONNECTION TO IT.

12:54PM 1 AND IT MAY BE PUBLISHED.

12:54PM 2 MR. BOSTIC: THANK YOU, YOUR HONOR.

12:54PM 3 (GOVERNMENT'S EXHIBIT 5917 WAS RECEIVED IN EVIDENCE.)

12:54PM 4 BY MR. BOSTIC:

12:54PM 5 Q. LET'S START WITH PAGE 2 OF THIS EMAIL.

12:54PM 6 MR. SONNIER, DO YOU SEE THAT THIS EMAIL STARTS WITH A

12:55PM 7 MESSAGE TO ME FROM MR. O'NEILL FROM THE DORSEY LAW FIRM?

12:55PM 8 A. YES.

12:55PM 9 Q. AND DO YOU SEE IN THAT IMAGINE I'M REQUESTING A BRIEF CALL

12:55PM 10 TO TOUCH BASE ON SOME ISSUES REGARDING THERANOS?

12:55PM 11 A. YES.

12:55PM 12 Q. LET'S GO TO PAGE 1.

12:55PM 13 DO YOU SEE ON THE BOTTOM HALF OF THE PAGE THERE'S A

12:55PM 14 MESSAGE FROM MR. O'NEILL AND HE REPORTS SOME INFORMATION ABOUT

12:55PM 15 THE LIS DATABASE.

12:55PM 16 DO YOU SEE THAT?

12:55PM 17 A. THE MIDDLE PART OF THE EMAIL CHAIN?

12:55PM 18 Q. YES. IT'S ALSO ON THE SCREEN IF THAT'S EASIER.

12:55PM 19 A. YES, YES, I SEE THAT.

12:55PM 20 Q. AND HE'S REPORTING TO THE GOVERNMENT THAT THE LIS DATABASE

12:55PM 21 WAS ENCRYPTED BY SUNNY BALWANI AND SOMEONE NAMED

12:55PM 22 SHEKAR CHANDRASEKARAN.

12:55PM 23 DO YOU SEE THAT?

12:55PM 24 A. YES.

12:55PM 25 Q. AND THEN THERE'S SOME INFORMATION RELAYED FROM

12:55PM 1 DAVID TAYLOR, WHO IS IDENTIFIED AS THE FORMER THERANOS  
12:55PM 2 PRESIDENT.  
12:55PM 3 DO YOU SEE THAT?  
12:55PM 4 A. YES.  
12:55PM 5 Q. AND ACCORDING TO THE EMAIL, MR. TAYLOR SAYS BEFORE THE  
12:56PM 6 COMPANY FORMALLY CLOSED, WE WERE ADVISED THAT IT WOULD BE A  
12:56PM 7 HERCULEAN UNDERTAKING TO GET THE LIS UP AND RUNNING AGAIN.  
12:56PM 8 DO YOU SEE THAT?  
12:56PM 9 A. YES.  
12:56PM 10 Q. AND LET'S GO UP IN THIS CHAIN FORWARD IN TIME AND LOOK AT  
12:56PM 11 ANOTHER EMAIL FROM MR. O'NEILL TO THE GOVERNMENT.  
12:56PM 12 DO YOU SEE THAT?  
12:56PM 13 A. YES.  
12:56PM 14 Q. AND HE REPORTS THE "ASSIGNEE DOES NOT KNOW WHO  
12:56PM 15 DECOMMISSIONED THE LIS DATABASE."  
12:56PM 16 DO YOU SEE THAT?  
12:56PM 17 A. YES.  
12:56PM 18 Q. AND THEN IN THE MIDDLE OF THAT PARAGRAPH IT SAYS, "ERIC  
12:56PM 19 STATED THAT THE LIS DATABASE WAS NOT INCLUDED IN THE MIGRATION  
12:56PM 20 OF THE CORPORATE SERVER EQUIPMENT OUT OF THE THERANOS FACILITY  
12:56PM 21 AND INTO THE COLO ENVIRONMENT."  
12:56PM 22 DO YOU SEE THAT?  
12:56PM 23 A. YES, I SEE THAT.  
12:56PM 24 Q. INSTEAD IT SAYS, "IT WAS DECOMMISSIONED SOMETIME EARLIER."  
12:56PM 25 DO YOU SEE THAT?

12:56PM 1 A. YEAH, I SEE THAT. BUT I THINK THAT MIGHT BE MISTAKEN.

12:57PM 2 Q. I APPRECIATE THAT, SIR. BUT ALL I'M ASKING FOR NOW IS  
12:57PM 3 WHETHER YOU SEE THE LANGUAGE IN THE EMAIL?

12:57PM 4 A. YES.

12:57PM 5 Q. AND DO YOU HAVE PERSONAL KNOWLEDGE OF WHEN THE LIS  
12:57PM 6 DATABASE WAS DECOMMISSIONED? WERE YOU PRESENT WHEN THESE  
12:57PM 7 THINGS WERE HAPPENING?

12:57PM 8 A. I ONLY KNOW THE SEQUENCE OF EVENTS FROM THE MATERIALS THAT  
12:57PM 9 I REVIEWED, AND THAT WOULD HAVE BEEN WHEN IT WAS DISASSEMBLED  
12:57PM 10 AT THE END OF AUGUST 2018.

12:57PM 11 Q. AND DO YOU SEE AT THE BOTTOM OF THAT PARAGRAPH THE EMAIL  
12:57PM 12 CONTINUES, "PRIOR TO THE ASSIGNMENT FOR THE BENEFIT OF  
12:57PM 13 CREDITORS, THERANOS HAD BEEN TOLD THAT IT COULD NO LONGER BE  
12:57PM 14 RECONSTRUCTED WITH THE EXISTING RESOURCES."

12:57PM 15 DO YOU SEE THAT REFERRING TO THE LIS?

12:57PM 16 A. YES.

12:57PM 17 Q. IS THIS MORE INFORMATION FROM PEOPLE ASSOCIATED WITH  
12:58PM 18 THERANOS THAT YOU ULTIMATELY DISAGREED WITH?

12:58PM 19 A. I FEEL LIKE THIS IS SORT OF TANGENTIAL BECAUSE I'M  
12:58PM 20 FOCUSED JUST ON THE LIS DATABASE AND THE FEASIBILITY OF  
12:58PM 21 RECOVERING THAT DATABASE AND ITS DATA.

12:58PM 22 I HAVE A FEELING THAT THIS IS SAYING THE LIS GENERALLY,  
12:58PM 23 LIKE THE LIS SYSTEM, WHICH IS A BIGGER, A BIGGER TASK.

12:58PM 24 EVEN SO, I DO DISAGREE WITH IT, THAT IT COULDN'T BE  
12:58PM 25 RECONSTRUCTED AT ALL OR THAT IT WAS A HERCULEAN TASK. IT WOULD

12:58PM 1 JUST TAKE SOME EFFORT TO PUT IT BACK TOGETHER.

12:58PM 2 Q. SO YOU SAY THAT THIS REFERENCES THE LIS SYSTEM AND NOT THE

12:58PM 3 DATABASE; IS THAT RIGHT?

12:58PM 4 A. THAT, THAT -- THE SECOND STATEMENT WHERE IT COULD NO

12:59PM 5 LONGER BE CONSTRUCTED, I THINK THAT'S WHAT THEY WERE REFERRING

12:59PM 6 TO THERE.

12:59PM 7 Q. ON ITS FACE, THOUGH, THIS EMAIL IS TALKING ABOUT THE LIS

12:59PM 8 DATABASE.

12:59PM 9 DO YOU SEE THE LANGUAGE AT THE TOP?

12:59PM 10 A. THAT'S WHAT ERIC IS TALKING ABOUT.

12:59PM 11 Q. SO YOU HAVE A DIFFERENT READ BASED ON YOUR ASSUMPTION

12:59PM 12 AFTER READING THE EMAIL?

12:59PM 13 A. YEAH. BASED ON MY TECHNICAL EXPERIENCE, KIND OF READING

12:59PM 14 IT FROM A TECHNICAL PERSPECTIVE, THAT'S MY INTERPRETATION.

12:59PM 15 Q. AND YOU DISAGREED WITH THERANOS'S OWN UNDERSTANDING THAT

12:59PM 16 IT WOULD BE IMPOSSIBLE TO RECONSTRUCT THE LIS WITH EXISTING

12:59PM 17 RESOURCES; IS THAT CORRECT?

12:59PM 18 MR. BRECHER: OBJECTION. MISSTATES PRIOR TESTIMONY

12:59PM 19 AND THIS DOCUMENT. THIS IS NOT THERANOS'S UNDERSTANDING.

12:59PM 20 THE COURT: DO YOU WANT TO ASK THAT QUESTION AGAIN?

12:59PM 21 MR. BOSTIC: SURE.

12:59PM 22 Q. DO YOU SEE IN THIS EMAIL IT INDICATES THAT THERANOS HAD

12:59PM 23 BEEN TOLD THAT IT COULD NO LONGER RECONSTRUCT THE LIS DATABASE

12:59PM 24 WITH THE EXISTING RESOURCES?

12:59PM 25 A. I DO SEE THAT, YES.

01:00PM 1 Q. DO YOU BELIEVE THAT THAT INFORMATION PROVIDED TO THERANOS  
01:00PM 2 WAS INCORRECT?

01:00PM 3 MR. BRECHER: OBJECTION, YOUR HONOR. THIS DOCUMENT  
01:00PM 4 WAS ADMITTED FOR NOTICE TO THE GOVERNMENT, NOT FOR THE TRUTH OF  
01:00PM 5 THE MULTIPLE LAYERS OF HEARSAY WITHIN.

01:00PM 6 THE COURT: ARE YOU ASKING HIS OPINION NOW SEPARATE  
01:00PM 7 FROM THE CONTEXT HERE, OR IS THIS A HYPOTHETICAL?

01:00PM 8 MR. BOSTIC: YES, YOUR HONOR. THIS WAS INFORMATION  
01:00PM 9 PROVIDED TO THE GOVERNMENT. I'M ASKING THIS WITNESS IF HE  
01:00PM 10 AGREES OR DISAGREES WITH THE PICTURE THAT IS BEING PAINTED OF  
01:00PM 11 THE GOVERNMENT AT THIS TIME.

01:00PM 12 MR. BRECHER: AS PHRASED, I THINK THAT'S OKAY. BUT  
01:00PM 13 THE QUESTION WAS ABOUT INFORMATION PROVIDED TO THERANOS.

01:00PM 14 THE COURT: WELL, I THINK MR. BOSTIC REPHRASED THE  
01:00PM 15 QUESTION IN A DIFFERENT WAY.

01:00PM 16 DID YOU UNDERSTAND THE QUESTION NOW, SIR?

01:00PM 17 THE WITNESS: I THINK I'VE LOST THE TRAIL.

01:00PM 18 BY MR. BOSTIC:

01:00PM 19 Q. LET ME TRY TO WEAVE THAT BACK TOGETHER.

01:00PM 20 THE COURT: WELL, THEN LET'S TRY TO REBOOT THEN,  
01:00PM 21 SHALL WE?

01:00PM 22 BY MR. BOSTIC:

01:00PM 23 Q. DO YOU SEE IN THIS EMAIL THAT THIS REPORTS TO THE  
01:00PM 24 GOVERNMENT THAT THERANOS HAD BEEN TOLD THAT IT WOULD NOT BE  
01:01PM 25 ABLE TO RECONSTRUCT THE LIS WITH EXISTING RESOURCES; IS THAT

01:01PM 1 CORRECT?

01:01PM 2 A. YES.

01:01PM 3 Q. AND YOU ULTIMATELY CONCLUDED SOMETHING DIFFERENT BASED ON

01:01PM 4 YOUR REVIEW; IS THAT FAIR?

01:01PM 5 A. YES.

01:01PM 6 Q. OKAY. WE CAN SET THAT ASIDE.

01:01PM 7 YOU TESTIFIED EARLIER THAT YOU NEVER ACTUALLY ACCESSED THE

01:01PM 8 LIS DATABASE, SO YOU HAVE NO FIRST-HAND KNOWLEDGE OF ITS

01:01PM 9 CONTENTS; IS THAT FAIR?

01:01PM 10 A. YES, I NEVER ACCESSED THE ACTUAL PRODUCTION DATABASE.

01:01PM 11 Q. DO YOU ALSO AGREE THAT YOU DON'T HAVE ANY FIRST-HAND

01:01PM 12 KNOWLEDGE OF WHEN OR TO WHAT EXTENT LIS WAS USED TO STORE

01:01PM 13 THERANOS DATA?

01:01PM 14 A. THE ONLY INFORMATION THAT I REVIEWED IS JUST GENERAL USER

01:01PM 15 GUIDE INFORMATION ABOUT SORT OF WHAT THEY WERE SHOWING THE USER

01:01PM 16 COULD DO IN THE SYSTEM. THAT'S IT.

01:02PM 17 Q. SO TO ANSWER MY QUESTION THEN, YOU DON'T HAVE ANY PERSONAL

01:02PM 18 KNOWLEDGE OF TO WHAT EXTENT THERANOS USED THE LIS DATABASE?

01:02PM 19 A. THEY'RE IN THE MATERIALS. THEY DISCUSS THAT -- IN VARIOUS

01:02PM 20 PLACES THEY SAY ALL, OR AT LEAST MOST, THERANOS LAB TEST

01:02PM 21 INFORMATION, PATIENT INFORMATION, STUFF LIKE THAT, IS STORED IN

01:02PM 22 THE DATABASE AFTER CERTAIN, AFTER A CERTAIN TIME.

01:02PM 23 I THINK THEY WERE USING A PREVIOUS SYSTEM, AND THEY MOVED

01:02PM 24 THAT DATA INTO THE NEW SYSTEM.

01:02PM 25 Q. LET ME SEE IF I CAN CLARIFY MY QUESTIONS FOR YOU.

01:02PM 1 SO WHEN I USE THE TERM "FIRST-HAND KNOWLEDGE," I MEAN  
01:02PM 2 KNOWLEDGE OF WHAT YOU'VE SEEN OF THE DATABASE AND NOT  
01:02PM 3 INFORMATION THAT YOU'VE GATHERED FROM READING MATERIALS.

01:02PM 4 CAN WE USE THAT AS A SHORTHAND FOR THAT?

01:02PM 5 A. OKAY.

01:03PM 6 Q. SO TO ASK THAT QUESTION AGAIN, DO YOU HAVE ANY FIRST-HAND  
01:03PM 7 PERSONAL KNOWLEDGE, NOT FROM WHAT YOU'VE READ, BUT FIRST-HAND  
01:03PM 8 KNOWLEDGE ABOUT THE EXTENT TO WHICH THERANOS ACTUALLY USED THE  
01:03PM 9 LIS?

01:03PM 10 A. RIGHT. SO AS I'VE SAID, I NEVER HAD MY HANDS ON THE  
01:03PM 11 DATABASE ITSELF.

01:03PM 12 Q. OKAY. IF I COULD ASK YOU TO LOOK AT 5930.

01:03PM 13 A. 5930.

01:03PM 14 Q. AND AT 5930, DO YOU SEE AN EMAIL CHAIN BETWEEN PEOPLE AT  
01:03PM 15 THERANOS, INCLUDING MR. BALWANI?

01:03PM 16 A. INCLUDING WHO?

01:03PM 17 Q. MR. BALWANI, THE DEFENDANT.

01:03PM 18 A. OH, OKAY. YES.

01:03PM 19 Q. DO YOU SEE THAT, SIR?

01:04PM 20 A. I'M LOOKING. MAYBE IT'S FURTHER DOWN.

01:04PM 21 Q. ARE YOU LOOKING AT 5930?

01:04PM 22 A. 5930. YES, I'M LOOKING AT 5930.

01:04PM 23 Q. AT THE TOP OF THE PAGE, DO YOU SEE THAT THIS IS AN EMAIL  
01:04PM 24 CHAIN INCLUDING MAX FOSQUE AND CHRISTIAN HOLMES AT THERANOS,  
01:04PM 25 ALONG WITH SUNNY BALWANI?

01:04PM 1 A. SOMEHOW 5930 THAT I HAVE COMES FROM MIKE ROMEO AND THEN I  
01:04PM 2 SEE CHRIS DAVIES --

01:04PM 3 MR. BOSTIC: MAY I APPROACH, YOUR HONOR?

01:04PM 4 THE COURT: YES.

01:04PM 5 MR. BRECHER, DO YOU HAVE 5930?

01:04PM 6 MR. BRECHER: I DO, YOUR HONOR, CONSISTENT WITH  
01:04PM 7 MR. BOSTIC'S DESCRIPTION.

01:04PM 8 THE COURT: OKAY.

01:04PM 9 BY MR. BOSTIC:

01:04PM 10 Q. MR. SONNIER, I'VE JUST HANDED YOU A COPY OF 5930.  
01:04PM 11 DO YOU SEE IT THERE?

01:04PM 12 A. OKAY.

01:05PM 13 Q. AND DO YOU SEE THAT THAT'S AN EMAIL CHAIN INCLUDING  
01:05PM 14 MR. BALWANI?

01:05PM 15 A. YES, I SEE HIS NAME ON THIS EMAIL.

01:05PM 16 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5930.

01:05PM 17 MR. BRECHER: OBJECTION. BEYOND THE SCOPE OF DIRECT  
01:05PM 18 AND PRIOR RULINGS, YOUR HONOR.

01:05PM 19 THE COURT: THIS IS THE TWO PAGES, MR. BOSTIC?

01:05PM 20 MR. BOSTIC: YES, YOUR HONOR.

01:05PM 21 THE WITNESS: IT SEEMS TO BE THREE PAGES.

01:05PM 22 MR. BOSTIC: THE WITNESS, WHO HAS MY COPY, POINTS  
01:05PM 23 OUT IT MAY BE THREE PAGES.

01:05PM 24 THE COURT: YES.

01:05PM 25 MR. BRECHER: AND I'LL TAKE THE TIME TO POINT OUT I

01:05PM 1 THINK IT MIGHT ACTUALLY BE FOUR.

01:05PM 2 THE COURT: IT'S TWO PHYSICAL PAGES THAT ARE PRINTED  
01:05PM 3 ON BOTH SIDES. CAN WE ALL AGREE ON THAT?

01:05PM 4 MR. BRECHER: YES.

01:05PM 5 (LAUGHTER.)

01:06PM 6 THE COURT: MR. BOSTIC, I'M NOT CERTAIN ABOUT THE  
01:06PM 7 ENTIRETY OF THIS CHAIN, WHAT IT ADDS TO THE EXAMINATION OF THIS  
01:06PM 8 WITNESS.

01:06PM 9 MR. BOSTIC: APOLOGIES, YOUR HONOR.

01:06PM 10 I THINK I COULD LIMIT THE EXHIBIT TO THE FIRST PAGE AND  
01:07PM 11 PERHAPS THE VERY TOP PORTION OF THE SECOND PAGE.

01:07PM 12 (PAUSE IN PROCEEDINGS.)

01:07PM 13 MR. BRECHER: SAME OBJECTIONS, YOUR HONOR, SCOPE AND  
01:07PM 14 PRIOR RULINGS ON THE SCOPE OF THIS WITNESS'S TESTIMONY.

01:08PM 15 THE COURT: MR. BOSTIC, I'M GOING TO -- WITHOUT A  
01:08PM 16 FOUNDATION, I'M GOING TO SUSTAIN THE OBJECTION.

01:08PM 17 MR. BOSTIC: OKAY. THANK YOU, YOUR HONOR.

01:08PM 18 Q. MR. SONNIER, DO YOU HAVE ANY FIRST-HAND KNOWLEDGE -- AND  
01:08PM 19 AGAIN, THAT'S PERSONAL KNOWLEDGE -- OF ANY PROBLEMS WITH THE  
01:08PM 20 LABORATORY INFORMATION SYSTEM THAT MIGHT HAVE AFFECTED ITS  
01:08PM 21 STABILITY OR RELIABILITY?

01:08PM 22 A. NO, I HAVE NO KNOWLEDGE OF THAT ASPECT.

01:08PM 23 Q. CAN I ASK YOU TO TURN THE PAGE TO 5931, PLEASE.

01:08PM 24 A. OKAY. 5931.

01:08PM 25 Q. 5931, DO YOU SEE ANOTHER EMAIL CHAIN INTERNALLY AT

01:08PM 1 THERANOS INCLUDING MR. BALWANI?

01:09PM 2 A. MY 5931 SEEMS TO BE WHAT YOU JUST HANDED ME AS 5903.

01:09PM 3 Q. OH, I SEE.

01:09PM 4 A. OH, MAYBE I NEED TO GO TO THE NEXT PAGE.

01:09PM 5 Q. AND IT SHOULD BE STAMPED AT THE BOTTOM OF THE PAGE 5931.

01:09PM 6 A. OKAY. SO 5931. GOT IT.

01:09PM 7 Q. DO YOU SEE A DECEMBER 2014 EMAIL CHAIN?

01:09PM 8 A. MY 5931 IS THURSDAY, DECEMBER 18TH, 2014.

01:09PM 9 Q. THAT'S CORRECT.

01:09PM 10 A. OKAY.

01:09PM 11 Q. AND DO YOU SEE THAT THAT EMAIL CHAIN INCLUDES MR. BALWANI?

01:09PM 12 A. YES, THE SECOND PORTION AT LEAST.

01:09PM 13 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS --

01:09PM 14 I'M SORRY TO TALK OVER YOU.

01:10PM 15 THE GOVERNMENT OFFERS 5931.

01:10PM 16 MR. BRECHER: SAME OBJECTIONS, YOUR HONOR,

01:10PM 17 PARTICULARLY AS TO THE FINAL EMAIL ON PAGE 2, I GUESS THE

01:10PM 18 EARLIEST IN THE CHAIN. BEYOND THE SCOPE AND PRIOR RULINGS ON

01:10PM 19 THE SCOPE OF HIS TESTIMONY.

01:10PM 20 MR. BOSTIC: SO YOUR HONOR -- I'LL LET THE COURT

01:10PM 21 REVIEW IT.

01:10PM 22 THE COURT: GO AHEAD.

01:10PM 23 MR. BOSTIC: THIS WITNESS IS TESTIFYING ABOUT THE

01:10PM 24 FEASIBILITY OF RECOVERING THIS DATABASE.

01:10PM 25 I SUBMIT THAT EVIDENCE REGARDING ITS STABILITY AND BUGS

01:10PM 1 WITH THE DATABASE IS RELEVANT TO THAT ISSUE, ESPECIALLY TO THE  
01:10PM 2 EXTENT THAT THE WITNESS HAS OR HAS NOT CONSIDERED THIS EVIDENCE  
01:10PM 3 BEFORE.

01:10PM 4 THE COURT: WHY DON'T YOU LAY A FOUNDATION AS TO  
01:10PM 5 THAT? I THINK YOU ASKED THAT OF THE PREVIOUS DOCUMENT.  
01:10PM 6 BY MR. BOSTIC:

01:10PM 7 Q. MR. SONNIER, YOU REVIEWED A WIDE RANGE OF MATERIALS  
01:10PM 8 PROVIDED TO YOU BY DEFENSE COUNSEL IN ORDER TO REACH YOUR  
01:10PM 9 CONCLUSIONS; IS THAT RIGHT?

01:10PM 10 A. YES, I DID.

01:10PM 11 Q. AND DID THE INFORMATION PROVIDED BY DEFENSE COUNSEL  
01:11PM 12 INCLUDE ANY EVIDENCE REGARDING STABILITY PROBLEMS OR BUGS WITH  
01:11PM 13 THE THERANOS LIS DATABASE?

01:11PM 14 A. I DON'T RECALL ANY SUCH INFORMATION, AND BASICALLY THAT  
01:11PM 15 WOULDN'T HAVE MATTERED TO ME ANYWAY.

01:11PM 16 Q. ARE YOU AWARE OF CIRCUMSTANCES WHERE STABILITY PROBLEMS OR  
01:11PM 17 BUGS OR ERRORS IN THE DATABASE CAN CREATE CHALLENGES IN  
01:11PM 18 ACCESSING OR RECOVERING THE DATABASE?

01:11PM 19 A. NO, I AM NOT.

01:11PM 20 Q. IT'S YOUR TESTIMONY TODAY THAT STABILITY PROBLEMS AND  
01:11PM 21 ERRORS IN THE DATABASES NEVER HAVE AN EFFECT ON THE ABILITY TO  
01:11PM 22 ACCESS A DATABASE?

01:11PM 23 MR. BRECHER: OBJECTION. MISSTATES PRIOR TESTIMONY.

01:11PM 24 THE COURT: OVERRULED. HE CAN ANSWER THE QUESTION.

01:11PM 25 THE WITNESS: SO ONLY IF THE PHYSICAL EQUIPMENT IS

01:11PM 1 AT FAULT, SO LIKE THE HARD DRIVES THEMSELVES ARE FAILING.

01:11PM 2 TO THE EXTENT THAT THERE ARE SOME FLAWS OR OTHER PROBLEMS  
01:12PM 3 WITH EITHER THE SOFTWARE OR THE DATABASE DESIGN, THAT WOULDN'T  
01:12PM 4 AFFECT THE RECOVERY. YOU WOULD SIMPLY RECOVER IT BUG FOR BUG  
01:12PM 5 LIKE IT WAS.

01:12PM 6 SO IF IT HAS INTERNAL PROBLEMS IN ITS STRUCTURE, IT  
01:12PM 7 WOULDN'T BE A PROBLEM RECOVERING.

01:12PM 8 IF THE HARD DRIVE, THE EQUIPMENT HAD FAILED, THEN YOU  
01:12PM 9 WOULD HAVE A HARD TIME RECOVERING.

01:12PM 10 BY MR. BOSTIC:

01:12PM 11 Q. IF YOU RECOVERED A DATABASE WITH BUGS, HOWEVER, COULDN'T  
01:12PM 12 YOU STILL ENCOUNTER PROBLEMS ACTUALLY ACCESSING AND MAKING USE  
01:12PM 13 OF THAT DATA?

01:12PM 14 A. NOT IN THE CONTEXT OF A MICROSOFT SQL SERVER. THE DATA  
01:12PM 15 MAY INDEED HAVE LOGIC ERRORS IN IT AND BE SOMEHOW INCONSISTENT  
01:12PM 16 AND RETURN AT A USER LEVEL BUGGY OR INCORRECT INFORMATION, BUT  
01:12PM 17 THE DATA WOULD BE THE DATA AND IT WOULD STILL BE RECOVERABLE.

01:12PM 18 Q. AND ONCE IT'S RECOVERABLE, IT'S YOUR TESTIMONY THAT THIS  
01:12PM 19 COULD STILL BE ACCESSED AND MANIPULATED REGARDLESS OF THE BUGS?

01:12PM 20 A. THAT'S CORRECT.

01:12PM 21 Q. OKAY. WE CAN SET THAT ASIDE.

01:13PM 22 YOU WERE QUALIFIED AS AN EXPERT IN SQL DATABASES DATA  
01:13PM 23 RECOVERY AND DATA ENCRYPTION; IS THAT RIGHT?

01:13PM 24 A. YES.

01:13PM 25 Q. AND YOU ARE NOT HERE TO TESTIFY ABOUT SUBJECTS LIKE BEST

01:13PM 1 PRACTICES FOR A CRIMINAL INVESTIGATION; IS THAT RIGHT?

01:13PM 2 A. NO, I'M NOT.

01:13PM 3 Q. YOU DON'T HAVE A BASIS TO GIVE AN OPINION ON SOMETHING

01:13PM 4 LIKE THAT; IS THAT RIGHT?

01:13PM 5 A. NO. I DO COMPUTER FORENSICS FOR LEGAL CASES, BUT THAT'S

01:13PM 6 REALLY A DIFFERENT TOPIC.

01:13PM 7 Q. SO YOU'RE NOT HERE TO GIVE ANY OPINION ABOUT, FOR EXAMPLE,

01:13PM 8 WHAT CONSTITUTES A GOOD CRIMINAL INVESTIGATION OR A BAD

01:13PM 9 CRIMINAL INVESTIGATION; RIGHT?

01:13PM 10 A. I'M NOT HERE FOR THAT.

01:13PM 11 Q. AND YOU'RE NOT HERE TO WEIGH IN ON SOMETHING LIKE HOW

01:13PM 12 PROSECUTORS PRIORITIZE INVESTIGATIVE STEPS IN A COMPLEX

01:13PM 13 CRIMINAL INVESTIGATION; IS THAT FAIR?

01:13PM 14 A. THAT'S CORRECT.

01:14PM 15 Q. AND ALTHOUGH YOU'RE AN EXPERT IN SQL DATABASES, YOUR

01:14PM 16 TESTIMONY HERE HAS BEEN ABOUT A PARTICULAR DATABASE; IS THAT

01:14PM 17 RIGHT?

01:14PM 18 A. IT'S A PARTICULAR DATABASE IN THAT IT'S A PARTICULAR --

01:14PM 19 IT'S -- WE'RE TALKING ABOUT A PARTICULAR DATABASE IN THAT THE

01:14PM 20 SPECIFIC DATA THAT WOULD BE RECOVERED WOULD BE PARTICULAR.

01:14PM 21 BUT THE TECHNIQUES I'M DESCRIBING WOULD APPLY TO ANY SQL

01:14PM 22 SERVER DATABASE.

01:14PM 23 Q. BUT THE SPECIFIC DATABASE THAT WE'RE TALKING ABOUT TODAY

01:14PM 24 IS THE THERANOS LIS DATABASE; RIGHT?

01:14PM 25 A. THAT IS CORRECT.

01:14PM 1 Q. AND WHEN IT COMES TO THAT DATABASE, YOU'RE TESTIFYING  
01:14PM 2 ABOUT THE DATABASE THAT YOU HAD NO ROLE IN DESIGNING; IS THAT  
01:14PM 3 RIGHT?

01:14PM 4 A. THAT IS CORRECT. BUT THE -- AGAIN, THE DESIGN WOULDN'T  
01:14PM 5 IMPACT ANY OF MY OPINION BECAUSE IT OPERATES UNDERNEATH ALL OF  
01:15PM 6 THAT.

01:15PM 7 Q. YOU ALSO HAD NO ROLE IN INSTALLING OR SETTING UP THE  
01:15PM 8 THERANOS LIS DATABASE; IS THAT RIGHT?

01:15PM 9 A. THAT IS CORRECT.

01:15PM 10 Q. YOU HAD NO ROLE IN MAINTAINING THE THERANOS LIS; IS THAT  
01:15PM 11 CORRECT?

01:15PM 12 A. THAT'S CORRECT.

01:15PM 13 Q. AT NO POINT DID YOU EVER OPERATE OR ACCESS THE THERANOS  
01:15PM 14 LIS; IS THAT CORRECT?

01:15PM 15 A. THAT'S CORRECT.

01:15PM 16 Q. AND, IN FACT, YOU NEVER SAW THE THERANOS LIS OR ANY  
01:15PM 17 COMPONENT OF THE DATABASE IN PERSON; IS THAT CORRECT?

01:15PM 18 A. OTHER THAN THE BACKUP THAT I LOOKED AT AND WAS UNABLE TO  
01:15PM 19 RESTORE, THAT IS THE ONLY HANDS ON THAT I HAD WITH THE LIS  
01:15PM 20 DATABASE.

01:15PM 21 Q. AND THE PEOPLE WHO DID HAVE THAT FIRST-HAND KNOWLEDGE, THE  
01:15PM 22 PEOPLE WHO SET UP, WHO OPERATED, WHO MAINTAINED THE DATABASE,  
01:15PM 23 YOU NEVER HAVE SPOKEN TO A SINGLE ONE OF THEM; IS THAT CORRECT?

01:15PM 24 A. THAT'S CORRECT, I'VE NEVER SPOKEN TO THOSE INDIVIDUALS.

01:15PM 25 Q. YOU LEARNED ABOUT THE DATABASE PARTLY BY REVIEWING

01:16PM 1 STATEMENTS AND COMMUNICATIONS FROM SOME OF THOSE PEOPLE WITH  
01:16PM 2 FIRST-HAND KNOWLEDGE?

01:16PM 3 A. YES.

01:16PM 4 Q. AND IN REVIEWING THAT INFORMATION FROM THOSE INDIVIDUALS,  
01:16PM 5 YOU BECAME AWARE OF SOME INFORMATION FROM THEM THAT WAS  
01:16PM 6 DIRECTLY CONTRARY TO YOUR ULTIMATE CONCLUSION IN THE CASE; IS  
01:16PM 7 THAT CORRECT?

01:16PM 8 A. I WENT THROUGH ALL OF THE STATEMENTS, AND IF THERE WAS  
01:16PM 9 ANYTHING THAT SEEMED ODD OR INCONSISTENT, I INVESTIGATED IT.

01:16PM 10 Q. DURING OUR CONVERSATION TODAY, HAVEN'T WE LOOKED AT SOME  
01:16PM 11 SPECIFIC EXAMPLES WHERE YOU WERE PROVIDED STATEMENTS FROM  
01:16PM 12 INDIVIDUALS THAT CONFLICTED WITH YOUR ULTIMATE CONCLUSION?

01:16PM 13 A. THERE WERE STATEMENTS THAT DIDN'T MAKE SENSE TO ME AT THE  
01:16PM 14 TIME AND I INVESTIGATED THOSE, AND, YES, I ARRIVED AT MY  
01:17PM 15 OPINIONS THAT WOULD BE CONTRARY TO THAT STATEMENT.

01:17PM 16 Q. IS THAT YES TO MY QUESTION, SIR?

01:17PM 17 A. YES.

01:17PM 18 Q. AND THE QUESTION OF WHETHER THE LIS COULD HAVE BEEN  
01:17PM 19 RECOVERED FROM THE ORIGINAL IS SOMETHING OF A HYPOTHETICAL  
01:17PM 20 BECAUSE YOU DON'T HAVE PERSONAL KNOWLEDGE OF WHERE THAT  
01:17PM 21 HARDWARE ACTUALLY IS; IS THAT CORRECT?

01:17PM 22 MR. BRECHER: OBJECTION. COUNSEL IS TESTIFYING.  
01:17PM 23 IT'S ARGUMENT.

01:17PM 24 THE COURT: OVERRULED.

01:17PM 25 DO YOU UNDERSTAND THE QUESTION?

01:17PM 1 THE WITNESS: YES, I DO.

01:17PM 2 THE COURT: YOU CAN ANSWER IT.

01:17PM 3 THE WITNESS: NO, ABSOLUTELY NOT. THIS IS A SQL  
01:17PM 4 SERVER, IT'S A KNOWN PRODUCT, IT'S WELL DOCUMENTED BY  
01:17PM 5 MICROSOFT, IT HAS WELL-KNOWN RECOVERY TECHNIQUES, AS ARE THE  
01:17PM 6 EQUIPMENT WHICH IT OPERATES.

01:17PM 7 IT'S ALL WHAT WE CALL COMMERCIAL OFF-THE-SHELF EQUIPMENT,  
01:17PM 8 AGAIN, WITH DEFINED AND WELL-KNOWN WAYS TO RECOVER THE DATA.  
01:17PM 9 BY MR. BOSTIC:

01:17PM 10 Q. AND YOU'RE ASSUMING THAT NOT BASED ON FIRST-HAND  
01:17PM 11 INFORMATION, BUT BASED ON THE MATERIALS THAT YOU'VE REVIEWED;  
01:17PM 12 IS THAT CORRECT?

01:17PM 13 A. WELL, I'M GOING BY THE INFORMATION THAT SAYS WHAT THE  
01:18PM 14 EQUIPMENT WAS AND WHAT THE SOFTWARE WAS AND THEN USING THAT  
01:18PM 15 HARD TECHNICAL INFORMATION TO ARRIVE AT MY OPINION.

01:18PM 16 Q. AND DO YOU HAVE THE ABILITY, AS OF TODAY, TO CONFIRM  
01:18PM 17 WHETHER YOU'RE RIGHT OR WRONG, THAT IS, WHETHER TO ACTUALLY --  
01:18PM 18 LET ME START THAT AGAIN.

01:18PM 19 DO YOU HAVE THE ABILITY TO TEST YOUR OPINION AND TO  
01:18PM 20 ACTUALLY TRY TO RECONSTRUCT THE DATABASE FROM THE ORIGINAL  
01:18PM 21 HARDWARE?

01:18PM 22 A. I WOULD BE HAPPY TO DO THAT IF YOU PROVIDED ME THE DISK  
01:18PM 23 DRIVES.

01:18PM 24 Q. AND SITTING HERE TODAY, ARE YOU AWARE OF WHERE THOSE DISK  
01:18PM 25 DRIVES ARE? DO YOU HAVE THAT PERSONAL KNOWLEDGE?

01:18PM 1 A. I DO NOT KNOW WHERE THE DISK DRIVES ARE.

01:18PM 2 Q. THANK YOU.

01:18PM 3 NO FURTHER QUESTIONS.

01:18PM 4 THE COURT: REDIRECT?

01:18PM 5 MR. BRECHER: YES, YOUR HONOR. THANK YOU.

01:18PM 6 **REDIRECT EXAMINATION**

01:18PM 7 BY MR. BRECHER:

01:18PM 8 Q. THANK YOU, MR. SONNIER.

01:19PM 9 I'M GOING TO ASK YOU A FEW QUESTIONS ABOUT YOUR

01:19PM 10 CONVERSATION JUST NOW WITH MR. BOSTIC.

01:19PM 11 IS THAT ALL RIGHT?

01:19PM 12 A. CERTAINLY.

01:19PM 13 Q. OKAY. AND MR. BOSTIC ASKED YOU ABOUT SOME OF THE

01:19PM 14 MATERIALS THAT YOU REVIEWED.

01:19PM 15 DO YOU REMEMBER THAT?

01:19PM 16 A. YES.

01:19PM 17 Q. AND HE ASKED YOU WHETHER THOSE WERE PROVIDED BY THE

01:19PM 18 DEFENSE?

01:19PM 19 A. YES.

01:19PM 20 Q. DID YOU HAVE A CHANCE TO REQUEST ADDITIONAL MATERIALS THAT

01:19PM 21 YOU THOUGHT NECESSARY TO FORM YOUR OPINION?

01:19PM 22 A. YES, AND I DID SO SEVERAL TIMES.

01:19PM 23 Q. OKAY. AND DID YOU RECEIVE MATERIALS THAT YOU THOUGHT WERE

01:19PM 24 SUFFICIENT TO FORM YOUR OPINIONS?

01:19PM 25 A. YES, I DID.

01:19PM 1 Q. OKAY. MR. BOSTIC SHOWED YOU A FEW INTERVIEW MEMOS I THINK  
01:20PM 2 CONDUCTED BY THE FBI.  
01:20PM 3 DO YOU REMEMBER THAT?  
01:20PM 4 A. YES.  
01:20PM 5 Q. AND HAD YOU SEEN THOSE BEFORE?  
01:20PM 6 A. YES, I HAD.  
01:20PM 7 Q. WHO PROVIDED THEM TO YOU?  
01:20PM 8 A. THE DEFENSE TEAM DID.  
01:20PM 9 Q. AND DID YOU CONSIDER THOSE MEMORANDA IN FORMING YOUR  
01:20PM 10 OPINIONS?  
01:20PM 11 A. YES, I DID.  
01:20PM 12 Q. AND YOU MAY HAVE MR. BOSTIC'S BINDER STILL IN FRONT OF  
01:20PM 13 YOU, AND I'M NOT GOING TO DWELL ON THIS, BUT LET'S START WITH  
01:20PM 14 EXHIBIT 5929.  
01:20PM 15 TAKE YOUR TIME, SIR.  
01:20PM 16 A. OKAY. 5929. OKAY, I THINK I HAVE IT.  
01:20PM 17 Q. AND IS THIS ONE OF THOSE MEMORANDA THAT YOU REVIEWED?  
01:20PM 18 A. IT IS INDEED.  
01:20PM 19 Q. AND DO YOU HAVE AN UNDERSTANDING ABOUT WHEN THE INTERVIEW  
01:20PM 20 REFERENCED WITHIN IT TOOK PLACE, WHAT YEAR?  
01:21PM 21 A. 2020.  
01:21PM 22 Q. OKAY. HOW ABOUT 5927. LET ME KNOW WHEN YOU'RE THERE,  
01:21PM 23 SIR?  
01:21PM 24 A. 5927. YES, I'VE GOT IT.  
01:21PM 25 Q. IS THIS ANOTHER ONE OF THOSE INTERVIEW MEMORANDA CONDUCTED

01:21PM 1 BY THE GOVERNMENT?

01:21PM 2 A. YES, IT IS.

01:21PM 3 Q. AND DO YOU KNOW WHAT YEAR THIS INTERVIEW TOOK PLACE BASED

01:21PM 4 ON THE INFORMATION THAT YOU RECEIVED?

01:21PM 5 A. YES, 2020.

01:21PM 6 Q. AND IF YOU WOULD FLIP AHEAD ONE TAB TO EXHIBIT 5928.

01:21PM 7 A. 5928, YES.

01:21PM 8 Q. IS THIS ANOTHER ONE OF THOSE MEMORANDA THAT WE'VE BEEN

01:21PM 9 TALKING ABOUT?

01:21PM 10 A. YES, IT IS.

01:21PM 11 Q. AND DO YOU HAVE AN UNDERSTANDING ABOUT WHICH YEAR THIS

01:21PM 12 INTERVIEW TOOK PLACE?

01:21PM 13 A. YES. AGAIN, 2020.

01:21PM 14 Q. AND COULD WE LOOK AT EXHIBIT 5938?

01:21PM 15 A. 5938. UH-HUH.

01:22PM 16 Q. MR. SONNIER, IS THIS ANOTHER ONE OF THOSE INTERVIEW

01:22PM 17 MEMORANDA THAT WE'VE BEEN DISCUSSING?

01:22PM 18 A. YES, IT IS.

01:22PM 19 Q. AND DO YOU KNOW WHAT YEAR -- DO YOU HAVE AN UNDERSTANDING

01:22PM 20 OF WHAT YEAR THIS INTERVIEW TOOK PLACE?

01:22PM 21 A. 2020.

01:22PM 22 Q. OKAY. STICKING WITH THOSE MEMORANDA, MR. BOSTIC ASKED YOU

01:22PM 23 ABOUT INFORMATION YOU RECEIVED FROM VARIOUS I.T. PERSONS

01:22PM 24 WORKING AT OR NEAR THERANOS IN AUGUST 2018.

01:22PM 25 DO YOU REMEMBER THAT?

01:22PM 1 A. I BELIEVE SO, YES.

01:22PM 2 Q. OKAY. AND ONE OF THE PEOPLE THAT HE SPOKE TO ABOUT -- I  
01:22PM 3 THINK YOU SAW FOUR MEMORANDUM FROM HIM -- WAS MICHAEL CHUNG.

01:22PM 4 A. YES.

01:22PM 5 Q. AND I BELIEVE YOU STARTED TO TELL MR. BOSTIC ABOUT YOUR  
01:22PM 6 UNDERSTANDING OF MR. CHUNG'S ROLE AT THE TIME.

01:22PM 7 A. YES.

01:22PM 8 Q. AND COULD YOU DESCRIBE THAT IN GREATER DEPTH, JUST YOUR  
01:22PM 9 UNDERSTANDING, SIR?

01:22PM 10 MR. BOSTIC: OBJECTION. FOUNDATION. CALLS FOR  
01:22PM 11 SPECULATION.

01:22PM 12 MR. BRECHER: YOUR HONOR, THE GOVERNMENT SQUARELY  
01:23PM 13 OPENED THE DOOR TO THIS BY ASKING ABOUT MR. CHUNG'S RELATIVE  
01:23PM 14 EXPERIENCE WITH LIS, AND I THINK IT'S FAIR TO CONTEXTUALIZE  
01:23PM 15 THAT.

01:23PM 16 THE COURT: THE WITNESS HAS ALREADY TESTIFIED  
01:23PM 17 SEVERAL TIMES ABOUT HIS OPINION ABOUT MR. CHUNG BEING A  
01:23PM 18 CONTRACT EMPLOYEE, I THINK. IS THAT WHAT YOU'RE ASKING HIM TO  
01:23PM 19 ELABORATE ON?

01:23PM 20 MR. BRECHER: THAT, AND THE DATE AND EXTENT OF HIS  
01:23PM 21 EXPOSURE TO LIS, WHICH WAS AN EXTENSIVE SUBJECT DURING CROSS.

01:23PM 22 THE COURT: YOU CAN ASK THOSE QUESTIONS.

01:23PM 23 MR. BRECHER: THANK YOU, YOUR HONOR.

01:23PM 24 Q. MR. SONNIER, DO YOU HAVE A SENSE OF MR. CHUNG'S ROLE IN  
01:23PM 25 THIS SUMMER 2018 PERIOD?

01:23PM 1 A. YES. MY UNDERSTANDING FROM THE MATERIALS THAT I REVIEWED  
01:23PM 2 WAS THAT MR. CHUNG WAS RECOMMENDED AS A CONTRACTOR IN THE  
01:23PM 3 SUMMER OF 2-18 TO COME IN AND MOVE SERVER EQUIPMENT AT THERANOS  
01:23PM 4 TO OTHER LOCATIONS. I BELIEVE CADDENHEAD, ERIC CADDENHEAD  
01:23PM 5 ACTUALLY SET HIM UP AS THE CONTACT, OR REFERRED HIM TO  
01:24PM 6 THERANOS.

01:24PM 7 Q. AND YOU SAID SUMMER 2-18. DOES THAT MEAN THE SUMMER 2018,  
01:24PM 8 SIR?

01:24PM 9 A. RIGHT, THE SUMMER OF 2018.

01:24PM 10 Q. AND MR. BOSTIC ASKED YOU ABOUT YOUR UNDERSTANDING OF  
01:24PM 11 MR. CHUNG'S FIRST-HAND EXPERIENCE WITH THE LIS SYSTEM; IS THAT  
01:24PM 12 RIGHT?

01:24PM 13 A. THAT'S CORRECT.

01:24PM 14 Q. AND WHAT IS THAT UNDERSTANDING?

01:24PM 15 A. MY UNDERSTANDING IS THAT MR. CHUNG QUITE UNDERSTANDABLY  
01:24PM 16 KNEW VERY LITTLE ABOUT LIS. IT WAS A CUSTOM SYSTEM. HE NEVER  
01:24PM 17 HAD SEEN IT AT ANY OF HIS OTHER CLIENTS, AND HE WAS VERY  
01:24PM 18 CONCERNED BECAUSE THERE WERE VERY FEW PEOPLE --

01:24PM 19 MR. BOSTIC: OBJECTION, YOUR HONOR.

01:24PM 20 THE COURT: SUSTAINED.

01:24PM 21 MR. BOSTIC: LACK OF FOUNDATION AND MOVE TO STRIKE.

01:24PM 22 THE COURT: SUSTAINED. THE LAST PORTION OF THE  
01:24PM 23 ANSWER IS STRICKEN FOR LACK OF FOUNDATION.

01:24PM 24 BY MR. BRECHER:

01:24PM 25 Q. MR. SONNIER, DID YOU SEE ANYTHING IN ALL OF THE MATERIALS

01:24PM 1 THAT SUGGESTED THAT MR. CHUNG'S CONCERNS THAT YOU DISCUSSED

01:25PM 2 WITH MR. BOSTIC WOULD UNDERMINE YOUR OPINION IN ANY WAY?

01:25PM 3 A. NO, NONE OF HIS CONCERNS UNDERMINED MY OPINION IN ANY WAY.

01:25PM 4 Q. WHAT ABOUT THAT OF THE OTHER I.T. PERSON, I DON'T THINK

01:25PM 5 HIS NAME CAME INTO EVIDENCE, BUT THE OTHER MEMORANDUM THAT YOU

01:25PM 6 LOOKED AT WITH MR. BOSTIC?

01:25PM 7 A. AGAIN, IT DIDN'T ULTIMATELY AFFECT MY OPINION.

01:25PM 8 Q. YOU TESTIFIED WHEN YOU WERE TALKING TO MR. BOSTIC THAT

01:25PM 9 THERE WERE SOME PIECES OF INFORMATION THAT YOU REVIEWED THAT

01:25PM 10 YOU ULTIMATELY DISAGREED WITH; IS THAT CORRECT?

01:25PM 11 A. THAT'S CORRECT.

01:25PM 12 Q. CAN YOU EXPLAIN WHY YOU ULTIMATELY DISAGREED?

01:25PM 13 A. WELL, SOME OF THE STATEMENTS IMPLIED A CERTAIN

01:25PM 14 IMPLEMENTATION OF TECHNOLOGY, AND THEN BY THE TIME I WENT

01:25PM 15 THROUGH ALL OF THE MATERIAL, IT TURNS OUT THERE WAS NO

01:25PM 16 TECHNICAL BASIS FOR THAT OPINION.

01:26PM 17 SO I, I SIMPLY CONCLUDED THAT MAYBE THERE WAS SOME

01:26PM 18 MISUNDERSTANDING IN THAT REPORT BY THAT WITNESS OR THE

01:26PM 19 INTERVIEWEE OR THEY WERE SPEAKING OF SOME OTHER ASPECT OF

01:26PM 20 TECHNOLOGY OTHER THAN THE RECOVERY OF THE LIS DATABASE.

01:26PM 21 Q. BUT IN FAIRNESS, SIR, MR. BOSTIC ASKED WHETHER YOU

01:26PM 22 PERSONALLY INTERVIEWED THESE PEOPLE.

01:26PM 23 DO YOU REMEMBER THAT TESTIMONY?

01:26PM 24 A. THAT'S CORRECT.

01:26PM 25 Q. YES. AND YOU SAID THAT YOU HAD NOT?

01:26PM

1

A. I HAVE NOT.

01:26PM

2

Q. WAS THAT NECESSARY FOR YOU TO FORM YOUR OPINIONS?

01:26PM

3

A. NO. ALL I REALLY NEEDED TO IDENTIFY WAS THE EXACT -- NOT

01:26PM

4

THE EXACT, BUT THE GENERAL HARDWARE AND SOFTWARE THAT WAS USED

01:26PM

5

FOR THE LIS DATABASE, AND ONCE I HAD THAT INFORMATION AND PUT

01:26PM

6

THE PUZZLE TOGETHER, THEN THAT WAS THE BASIS FOR MY OPINION.

01:26PM

7

Q. IN YOUR OTHER WORK, DO YOU TYPICALLY FORM CONCLUSIONS

01:26PM

8

WITHOUT INTERVIEWING PERSONS WITH FIRST-HAND KNOWLEDGE?

01:27PM

9

A. YES. IT OFTEN HAPPENS THAT SUCH PERSONS ARE UNAVAILABLE.

01:27PM

10

Q. COULD YOU GIVE US A SENSE OF WHY THAT MIGHT BE THE CASE?

01:27PM

11

A. FOR EXAMPLE, ONE TIME THE PERSON WAS TRYING TO STEAL ALL

01:27PM

12

OF THE BUSINESS STUFF OF MY CLIENT, AND SO THEY WANTED NOTHING

01:27PM

13

MORE TO DO WITH THEM.

01:27PM

14

Q. ANY OTHER CIRCUMSTANCES?

01:27PM

15

A. SOMETIMES PEOPLE --

01:27PM

16

MR. BOSTIC: OBJECTION. RELEVANCE.

01:27PM

17

MR. BRECHER: YOUR HONOR, MR. BOSTIC ASKED ABOUT THE

01:27PM

18

LIMITATIONS OF THE METHODOLOGY. I THINK IT'S FAIR TO EXPLORE

01:27PM

19

THAT.

01:27PM

20

THE COURT: YOU CAN ANSWER THE QUESTION.

01:27PM

21

MR. BRECHER: THANK YOU.

01:27PM

22

THE WITNESS: SOMETIMES PEOPLE HAVE JUST MOVED ON TO

01:27PM

23

OTHER COMPANIES AND THEY EITHER DON'T WANT OR CAN'T, MAYBE NOT

01:27PM

24

EVEN ALLOWED, TO ANSWER QUESTIONS ABOUT THEIR FORMER EMPLOYER.

01:27PM

25

BY MR. BRECHER:

01:27PM 1 Q. WHY DON'T WE JUST WRAP UP THIS LINE OF TESTIMONY,  
01:27PM 2 MR. SONNIER.

01:27PM 3 WOULD YOU DESCRIBE IT AS TYPICAL IN YOUR WORK TO RELY ON  
01:27PM 4 INTERVIEW SUMMARIES OR SECOND-HAND INFORMATION?

01:27PM 5 A. IT'S VERY OFTEN. IT PROBABLY ALWAYS IS A LITTLE BIT OF A  
01:28PM 6 TIME SAVINGS IF YOU CAN GET SOME INFORMATION DIRECT FROM THE  
01:28PM 7 PEOPLE THAT -- WHO ARE IN CHARGE OF THE SYSTEM PREVIOUSLY.

01:28PM 8 BUT IT OFTEN HAPPENS, LIKE I SAID, THAT THOSE PEOPLE  
01:28PM 9 AREN'T AVAILABLE, AND SO YOU WORK FROM THE -- ULTIMATELY FROM  
01:28PM 10 THE SYSTEM IN FRONT OF YOU OR FROM THE TECHNICAL INFORMATION  
01:28PM 11 ABOUT THAT SYSTEM.

01:28PM 12 Q. YOU TOLD MR. BOSTIC THAT YOU THOROUGHLY INVESTIGATED  
01:28PM 13 STATEMENTS IN THE MATERIALS THAT YOU REVIEWED THAT YOU THOUGHT  
01:28PM 14 WERE CONTRARY TO YOUR ULTIMATE OPINIONS.

01:28PM 15 DO YOU REMEMBER THAT?

01:28PM 16 A. YES.

01:28PM 17 Q. COULD YOU EXPLAIN HOW YOU INVESTIGATED THOSE STATEMENTS?

01:28PM 18 A. WELL, I REVIEWED ALL OF THE MATERIAL, AND WHEN I CAME  
01:28PM 19 ACROSS STATEMENTS THAT MIGHT APPEAR OR COULD POTENTIALLY CREATE  
01:28PM 20 SOME BARRIER MAKING IT DIFFICULT, OR POSSIBLY REMOVE THE  
01:28PM 21 POSSIBILITY OF RECOVERING THE LIS DATABASE, WHICH WAS, AS I'VE  
01:29PM 22 STATED, MY TASK, THEN I INVESTIGATED THOSE ITEMS THOROUGHLY TO  
01:29PM 23 SEE IF THERE'S ANY REAL TECHNICAL REASON WHY THOSE STATEMENTS  
01:29PM 24 MIGHT HAVE BEEN MADE.

01:29PM 25 AND IN ALL CASES IT TURNED OUT NOT TO BE THE CASE.

01:29PM 1 Q. OKAY. AND LET'S TALK ABOUT A FEW OF THOSE STATEMENTS.

01:29PM 2 MR. BOSTIC ASKED YOU ABOUT A NUMBER OF PERSONS WHO SEEM TO  
01:29PM 3 BELIEVE THAT IT WOULD HAVE BEEN EITHER IMPOSSIBLE OR VERY  
01:29PM 4 DIFFICULT TO REASSEMBLE THE LIS SYSTEM.

01:29PM 5 DO YOU REMEMBER THAT TESTIMONY?

01:29PM 6 A. YES.

01:29PM 7 Q. WHY DO YOU CONCLUDE THAT THAT WAS NOT THE CASE?

01:29PM 8 A. AGAIN, ONCE YOU ANALYZE THE SYSTEM, THE EQUIPMENT IT WAS  
01:29PM 9 RUNNING ON, AND THE STANDARD OFF-THE-SHELF MICROSOFT SQL  
01:29PM 10 SERVER, THEN YOU CAN DETERMINE THAT IT IS RECOVERABLE UNLESS  
01:29PM 11 THERE'S SOME ACTIVE BLOCK, AND THERE WEREN'T -- AT A TECHNICAL  
01:29PM 12 LEVEL, THERE WEREN'T ANY.

01:30PM 13 I CAN'T REALLY EXPLAIN WHY PERHAPS SOME STATEMENTS WERE  
01:30PM 14 MADE THAT INDICATED THAT IT WASN'T.

01:30PM 15 Q. AND WHEN YOU REVIEW MATERIALS -- ACTUALLY, LET'S START  
01:30PM 16 WITH WHEN YOU REVIEWED MATERIALS IN THIS CASE, INCLUDING THOSE  
01:30PM 17 STATEMENTS, DO YOU TAKE THE MATERIALS YOU REVIEW AT FACE VALUE?

01:30PM 18 A. I ALWAYS RUN ALL OF THE INFORMATION BACKWARDS AND FORWARDS  
01:30PM 19 TO MAKE SURE THAT THE WHOLE PUZZLE FITS TOGETHER BECAUSE, YOU  
01:30PM 20 KNOW, ESPECIALLY TECHNICAL PEOPLE SOMETIMES SUMMARIZE  
01:30PM 21 INFORMATION OR THEY DUMB IT DOWN FOR WHOEVER THEY'RE TALKING  
01:30PM 22 TO, HOPING TO TAKE A HIGHLY TECHNICAL SUBJECT AND MAKE IT MORE  
01:30PM 23 UNDERSTANDABLE, AND SO THEY MAY GLOSS OVER SOME OF THE DETAIL.

01:30PM 24 SO I DON'T THINK THEY DO IT WITH THE INTENT TO DECEIVE OR  
01:30PM 25 ANYTHING. IT'S JUST THE NATURE OF TECHNICAL WORK.

01:30PM 1 SO I ALWAYS CHECK THE TECHNICAL BASIS FOR EVERY STATEMENT  
01:30PM 2 THAT IS RELEVANT.

01:30PM 3 Q. AND IS THAT CONCLUSION CONSISTENT WITH YOUR TRAINING AND  
01:31PM 4 EXPERIENCE?

01:31PM 5 A. ABSOLUTELY.

01:31PM 6 Q. AND IS THAT CONCLUSION CONSISTENT WITH THE MATERIALS THAT  
01:31PM 7 YOU REVIEWED IN THIS CASE?

01:31PM 8 A. YES.

01:31PM 9 Q. MR. BOSTIC ASKED YOU ABOUT ANOTHER STATEMENT ABOUT THE  
01:31PM 10 THERANOS LIS BEING A BESPOKE SYSTEM.

01:31PM 11 DO YOU REMEMBER THAT TESTIMONY?

01:31PM 12 A. YES.

01:31PM 13 Q. AND WHY DOESN'T THAT AFFECT YOUR ANALYSIS?

01:31PM 14 A. BECAUSE IT'S IN THE NATURE OF SQL DATABASES IN GENERAL,  
01:31PM 15 AND MICROSOFT SQL SERVER, THAT IF YOU DO ANY CUSTOM DATABASE,  
01:31PM 16 THEN YOU CAN THINK OF IT AS BESPOKE. I MEAN, CUSTOM, "BESPOKE"  
01:31PM 17 IN MY INTERPRETATION IS SYNONYMOUS.

01:31PM 18 AND SO IT'S JUST A ROUTINE USAGE OF A MICROSOFT SQL SERVER  
01:31PM 19 THAT A COMPANY, IF THEY'RE CREATING A DATABASE FOR THEIR OWN  
01:31PM 20 IN-HOUSE USE, NOT FOR SALE TO THE PUBLIC, IT WOULD BE A CUSTOM  
01:32PM 21 DATABASE.

01:32PM 22 SO THAT'S ROUTINE IN THE USE OF MICROSOFT SQL SERVER.

01:32PM 23 Q. AND WHAT IS THE RELATIONSHIP, IF ANY, BETWEEN THAT KIND OF  
01:32PM 24 CUSTOMIZATION ON THE ONE HAND AND THE RECOVERABILITY OF THE  
01:32PM 25 UNDERLYING DATA ON THE OTHER?

01:32PM 1 A. IT HAS NOTHING TO DO WITH EACH OTHER.

01:32PM 2 Q. MR. ALLEN, I DON'T KNOW IF THIS IS POSSIBLE, BUT

01:32PM 3 MR. BOSTIC INTRODUCED AN EXHIBIT ON DIRECT -- EXCUSE ME, ON

01:32PM 4 CROSS, WHICH IS ALREADY IN EVIDENCE, EXHIBIT 5940. I DON'T

01:32PM 5 KNOW IF WE HAVE THAT. THAT'S FINE.

01:32PM 6 PERHAPS I COULD ASK THE INDULGENCE OF MS. WACHS TO PUT

01:32PM 7 THAT UP.

01:32PM 8 AND THAT WILL BE IN THE GOVERNMENT'S BINDER THAT YOU HAVE

01:32PM 9 AS WELL, SIR?

01:32PM 10 MR. BOSTIC: DO YOU MEAN 5943, COUNSEL?

01:32PM 11 MR. BRECHER: I DO. EXHIBIT 5943.

01:32PM 12 THE WITNESS: 5943.

01:32PM 13 BY MR. BRECHER:

01:32PM 14 Q. AND IT WILL ALSO BE UP ON THE SCREEN IN FRONT OF YOU.

01:33PM 15 A. OH, OKAY. I SEE IT, YES.

01:33PM 16 Q. AND I BELIEVE YOU WERE TALKING TO MR. BOSTIC, THIS IS A

01:33PM 17 FOLLOW-UP EMAIL TO THE ONE THAT YOU AND I SPOKE ABOUT ON

01:33PM 18 DIRECT; IS THAT RIGHT?

01:33PM 19 A. YES.

01:33PM 20 Q. AND SO THIS IS AN EMAIL IN WHICH SOME SORT OF -- SOME

01:33PM 21 INTERNAL GOVERNMENT PERSON IS DISCUSSING THE VARIOUS OPTIONS

01:33PM 22 FOR RECOVERING THE LIS DATA; IS THAT RIGHT?

01:33PM 23 A. YES.

01:33PM 24 Q. OKAY. AND I'M JUST LOOKING AT THE VERY TOP EMAIL UNDER

01:33PM 25 "POSSIBLE ROUTES FORWARD."

01:33PM 1 AND JUST BEFORE THAT IT SAYS, "I HAD A MEETING WITH THE  
01:33PM 2 AUSA'S ON THE CASE REGARDING OUR OPTIONS AND WE ALL DECIDED TO  
01:33PM 3 DO THE FOLLOWING."  
01:33PM 4 A. YES, I SEE THAT.  
01:33PM 5 Q. AND YOU SEE THE FIRST BULLET SAYS, "PUSH BACK ON DEFENSE  
01:33PM 6 AND SEE IF THEY CAN BE PERSUADED TO PRODUCE THIS IN A MANNER  
01:33PM 7 THAT CAN BE VIEWED AND PROCESSED IN A STANDARD WAY"?  
01:33PM 8 DO YOU SEE THAT?  
01:33PM 9 A. YES.  
01:33PM 10 Q. AND THE SECOND OPTION IS "CHECK WITH THE FBI."  
01:33PM 11 DO YOU SEE THAT?  
01:34PM 12 A. YES.  
01:34PM 13 Q. BUT IN THE EMAIL BELOW, YOU SAW THAT THERE WERE TWO OTHER  
01:34PM 14 OPTIONS LISTED; ISN'T THAT RIGHT?  
01:34PM 15 A. YEAH. I BELIEVE THE EMAIL BELOW HAS LOTS OF OTHER OPTIONS  
01:34PM 16 BEYOND THOSE TWO.  
01:34PM 17 Q. THANK YOU, MS. WACHS.  
01:34PM 18 AND IF WE CAN TURN BACK, MR. ALLEN, TO EXHIBIT 20832.  
01:34PM 19 IT WILL BE IN YOUR BINDER, BUT IT WILL ALSO COME UP ON THE  
01:34PM 20 SCREEN.  
01:34PM 21 AND IF WE LOOK -- THIS IS AN EMAIL THAT PRECEDED THE ONE  
01:34PM 22 THAT WE WERE JUST LOOKING AT; IS THAT RIGHT?  
01:34PM 23 A. YES.  
01:34PM 24 Q. OKAY. AND DO YOU SEE UNDER THE FIRST BULLET, THAT FIRST  
01:34PM 25 SUBBULLET THAT SAYS, "IF THEY CAN'T FIGURE OUT HOW TO PRODUCE

01:34PM 1 THE CONTENTS OF THEIR DATABASE IN A LEGITIMATE MANNER, PERHAPS  
01:34PM 2 THEY'LL CONSIDER HANDING OVER THEIR PHYSICAL SQL SERVER AND WE  
01:34PM 3 CAN SET IT UP IN A WORKROOM."

01:34PM 4 A. YES, I SEE THAT.

01:34PM 5 Q. SO IT SEEMS THAT WAS NOT ONE OF THE OPTIONS THAT THE  
01:34PM 6 GOVERNMENT DECIDED TO PURSUE?

01:34PM 7 A. IF THEY FOLLOWED --

01:34PM 8 MR. BOSTIC: OBJECTION. CALLS FOR SPECULATION.

01:34PM 9 THE COURT: SUSTAINED.

01:34PM 10 MR. BRECHER: THANK YOU, YOUR HONOR.

01:34PM 11 Q. BASED ON THE EMAIL THAT MR. BOSTIC SHOWED YOU ON  
01:34PM 12 CROSS-EXAMINATION, WAS THAT LISTED AS ONE OF THE TWO OPTIONS  
01:34PM 13 THAT THIS TEAM HAD DECIDED ON?

01:35PM 14 A. IT WAS NOT.

01:35PM 15 Q. OKAY. AND THIS OPTION, WOULD THAT HAVE WORKED?

01:35PM 16 A. THIS WOULD HAVE WORKED.

01:35PM 17 Q. OKAY. AND THE THIRD BULLET, "IDENTIFY A VENDOR."

01:35PM 18 A. YES.

01:35PM 19 Q. IS THAT ALSO AN OPTION THAT WAS NOT LISTED ON  
01:35PM 20 EXHIBIT 5940?

01:35PM 21 A. YES.

01:35PM 22 Q. WOULD THAT HAVE ALSO WORKED?

01:35PM 23 A. IT WOULD WORK, YES.

01:35PM 24 Q. OKAY. MR. SONNIER, MR. BOSTIC ASKED YOU SOME QUESTIONS  
01:35PM 25 ABOUT YOUR UNDERSTANDING OF THE LOCATION OF THE DISK DRIVES

01:35PM 1 UNDERLYING THE THERANOS LIS.

01:35PM 2 DO YOU REMEMBER THAT?

01:35PM 3 A. YES.

01:35PM 4 Q. AND YOU HAD A CONVERSATION WITH HIM ABOUT A FACILITY

01:35PM 5 CALLED IRON MOUNTAIN?

01:35PM 6 A. YES.

01:35PM 7 Q. OKAY. AND MR. BOSTIC ASKED YOU WHETHER YOU WERE AWARE OF

01:35PM 8 ANYONE GOING AND PERSONALLY INSPECTING THE DISK DRIVES AT IRON

01:35PM 9 MOUNTAIN?

01:35PM 10 A. IT WAS SOMETHING APPROXIMATING THAT.

01:35PM 11 Q. HE DID ASK YOU WHETHER YOU PERSONALLY WENT OUT TO IRON

01:36PM 12 MOUNTAIN?

01:36PM 13 A. RIGHT.

01:36PM 14 Q. OKAY. ARE YOU AWARE, BASED ON THE MATERIALS THAT YOU

01:36PM 15 REVIEWED, OF ANY EFFORT BY ANY GOVERNMENT AGENT TO GO TO IRON

01:36PM 16 MOUNTAIN?

01:36PM 17 A. I HAVE SEEN NOTHING IN THE MATERIALS THAT I RECEIVED TO

01:36PM 18 THAT EFFECT.

01:36PM 19 Q. ARE YOU AWARE OF ANY EFFORT BY ANY PROSECUTOR TO GO TO

01:36PM 20 IRON MOUNTAIN?

01:36PM 21 A. THE SAME. I HAVEN'T SEEN ANYTHING TO THAT EFFECT.

01:36PM 22 Q. ARE YOU AWARE OF ANY EFFORT BY ANY GOVERNMENT I.T. EXPERT

01:36PM 23 TO GO TO IRON MOUNTAIN?

01:36PM 24 A. I'M NOT.

01:36PM 25 Q. OKAY. MR. SONNIER, IN ANY OF THE MATERIALS THAT YOU

01:36PM 1 REVIEWED, ARE YOU AWARE OF ANY EFFORT BY THE GOVERNMENT TO TRY  
01:36PM 2 TO GET THE SERVERS AND DRIVES AS YOU RECOMMEND?

01:36PM 3 A. I AM NOT AWARE OF ANY SUCH EFFORT.

01:36PM 4 Q. AND, MR. SONNIER, BASED ON ANYTHING THAT MR. BOSTIC SHOWED  
01:36PM 5 YOU ON CROSS-EXAMINATION, ARE YOU AWARE OF ANY EFFORT BY THE  
01:36PM 6 GOVERNMENT TO SECURE THE SERVERS AND DRIVES AS YOU RECOMMEND?

01:37PM 7 MR. BOSTIC: I'LL OBJECT TO THAT. 401 AND 403 TO  
01:37PM 8 THIS LINE.

01:37PM 9 THE COURT: OVERRULED.  
01:37PM 10 YOU CAN ANSWER THE QUESTION.

01:37PM 11 THE WITNESS: NO, I'M NOT AWARE OF ANY SUCH EFFORT.  
01:37PM 12 BY MR. BRECHER:

01:37PM 13 Q. AND, MR. SONNIER, DID ANYTHING IN YOUR DISCUSSION WITH  
01:37PM 14 MR. BOSTIC CAUSE YOU TO RECONSIDER THE OPINIONS YOU'VE OFFERED  
01:37PM 15 HERE TODAY?

01:37PM 16 A. NO, THEY DID NOT.

01:37PM 17 MR. BRECHER: YOUR HONOR, IF I COULD HAVE A MOMENT?  
01:37PM 18 THE COURT: SURE.

01:37PM 19 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

01:37PM 20 MR. BRECHER: MR. SONNIER, THANK YOU VERY MUCH, SIR.  
01:37PM 21 NOTHING FURTHER.

01:37PM 22 MR. BOSTIC: NOTHING FURTHER.

01:37PM 23 THE COURT: MAY THIS WITNESS BE EXCUSED?

01:37PM 24 MR. BOSTIC: YES, YOUR HONOR.

01:37PM 25 MR. BRECHER: YES, YOUR HONOR.

01:38PM 1 THE COURT: YOU'RE EXCUSED. THANK YOU VERY MUCH.

01:38PM 2 DOES THE DEFENSE HAVE ADDITIONAL WITNESSES TO CALL?

01:38PM 3 MR. COOPERSMITH: NO, YOUR HONOR.

01:38PM 4 BUT WE DO HAVE ADDITIONAL EXHIBITS TO ADMIT AS WE  
01:38PM 5 DISCUSSED EARLIER.

01:38PM 6 THE COURT: ALL RIGHT. THANK YOU.

01:38PM 7 LET'S TURN TO THOSE EXHIBITS NOW.

01:38PM 8 LADIES AND GENTLEMEN, WHY DON'T YOU JUST TAKE A STANDING  
01:38PM 9 BREAK WHILE WE ORGANIZE SOME EXHIBITS FOR YOU, IF YOU'D LIKE.  
01:38PM 10 AND WE WILL -- WE WILL CONCLUDE TODAY IN ABOUT 20 MINUTES AT  
01:38PM 11 2:00 O'CLOCK AS I INDICATED.

01:38PM 12 BUT LET'S SEE IF WE CAN RESOLVE THESE LAST EXHIBITS,  
01:38PM 13 COUNSEL.

01:39PM 14 (PAUSE IN PROCEEDINGS.)

01:39PM 15 MR. COOPERSMITH: YOUR HONOR, IF IT WOULD BE HELPFUL  
01:39PM 16 FOR THE COURT, I HAVE A BINDER WITH EXHIBIT NUMBERS.

01:39PM 17 THE COURT: ALL RIGHT. THANK YOU.

01:39PM 18 MR. COOPERSMITH: (HANDING.)

01:40PM 19 (PAUSE IN PROCEEDINGS.)

01:40PM 20 THE COURT: ALL RIGHT. MR. COOPERSMITH.

01:40PM 21 MR. COOPERSMITH: YES, YOUR HONOR.

01:40PM 22 AS I SAID -- MAY I REMOVE MY MASK?

01:40PM 23 THE COURT: YES, YES.

01:40PM 24 MR. COOPERSMITH: WE HAVE A NUMBER OF EXHIBITS TO  
01:40PM 25 ADMIT FOR THE RECORD, AND I CAN JUST START WITH THE FIRST ONE

01:40PM 1 IF THAT'S OKAY WITH THE COURT.

01:40PM 2 THE COURT: SURE.

01:40PM 3 MR. COOPERSMITH: SO THE FIRST ONE WE OFFER PURSUANT  
01:40PM 4 TO PREVIOUS RULINGS BY THE COURT IS EXHIBIT 15004. WITH THE  
01:40PM 5 COURT'S PERMISSION, WHEN YOU GET THAT, WE CAN PUBLISH THAT.

01:40PM 6 THE COURT: THIS IS BEING OFFERED FOR NOTICE?  
01:40PM 7 FOR --

01:40PM 8 MR. COOPERSMITH: YES, YOUR HONOR. IT'S BEING  
01:40PM 9 OFFERED ONLY FOR NOTICE TO MR. BALWANI OF THE MATTER ADDRESSED  
01:41PM 10 IN THE EMAIL.

01:41PM 11 THE COURT: ALL RIGHT. IT'S NOT BEING OFFERED FOR  
01:41PM 12 THE TRUTH OF THE MATTER ASSERTED?

01:41PM 13 MR. COOPERSMITH: THAT'S CORRECT, YOUR HONOR.

01:41PM 14 THE COURT: AND IS THAT ACCURATE AS TO ALL OF THESE  
01:41PM 15 EXHIBITS?

01:41PM 16 MR. COOPERSMITH: THERE ARE A FEW THAT WOULD BE IN A  
01:41PM 17 DIFFERENT CATEGORY BECAUSE THEY'RE PUBLIC RECORDS.

01:41PM 18 THE COURT: OKAY.

01:41PM 19 MR. COOPERSMITH: BUT FOR THE MOST PART.

01:41PM 20 THE COURT: ALL RIGHT. LET'S TAKE THEM ONE AT A  
01:41PM 21 TIME.

01:41PM 22 15004, YOU'RE OFFERING THIS NOT FOR THE TRUTH OF THE  
01:41PM 23 MATTER ASSERTED, BUT ONLY AS TO NOTICE FOR THE ITEMS CONTAINED  
01:41PM 24 IN THE EMAILS, THE SUBJECT CONTAINED IN THE EMAIL AS TO  
01:41PM 25 MR. BALWANI?

01:41PM 1 MR. COOPERSMITH: YEAH, AND THE ATTACHMENTS, YES,  
01:41PM 2 YOUR HONOR.

01:41PM 3 THE COURT: THE ATTACHMENTS. I HAVE A ONE PAGE  
01:41PM 4 DOCUMENT THAT'S PRINTED ON BOTH SIDES. IS THAT --

01:41PM 5 MR. COOPERSMITH: OH, YES. YOUR HONOR, I'M SORRY.  
01:41PM 6 JUST THE EMAIL THAT HAS THOSE TWO PAGES.

01:41PM 7 THE COURT: RIGHT. OKAY.  
01:41PM 8 ANY OBJECTION?

01:41PM 9 MR. LEACH: THAT'S FINE, YOUR HONOR.

01:41PM 10 THE COURT: THANK YOU.

01:41PM 11 THIS IS ADMITTED, LADIES AND GENTLEMEN, AGAIN, NOT FOR THE  
01:41PM 12 TRUTH OF THE MATTER ASSERTED IN THE EMAIL, BUT ONLY FOR THE  
01:42PM 13 ISSUE OF NOTICE AS TO THE SUBJECT IN THE EMAIL.

01:42PM 14 AND LET'S PUBLISH IT NOW, BOTH -- FOR THE JURY, BOTH  
01:42PM 15 SIDES, IF THAT'S POSSIBLE.

01:42PM 16 MR. COOPERSMITH: YOUR HONOR, DO YOU WANT ME TO  
01:42PM 17 DESCRIBE IT IN ANY WAY OR JUST LEAVE IT AT THAT?

01:42PM 18 THE COURT: WELL, I THINK YOU CAN PUT ON THE RECORD  
01:42PM 19 JUST THE DATES IN THE EMAILS. YOU DON'T HAVE TO READ IT I  
01:42PM 20 DON'T THINK.

01:42PM 21 MR. LEACH.

01:42PM 22 MR. LEACH: I THINK IT'S APPROPRIATE, YOUR HONOR, TO  
01:42PM 23 DISPLAY THE EMAIL. I WOULDN'T WANT ARGUMENT.

01:42PM 24 THE COURT: RIGHT. IT'S JUST GOING TO BE DISPLAYED  
01:42PM 25 ONLY.

01:42PM 1 AND IF YOU CAN JUST TIME STAMP IT? FOR EXAMPLE, THIS  
01:42PM 2 IS -- WELL, I DON'T WANT TO TESTIFY HERE, BUT YOU CAN INDICATE  
01:42PM 3 WHAT THIS IS JUST FOR THE DATE AND THE TIME JUST TO TIME STAMP  
01:42PM 4 IT.

01:42PM 5 MR. COOPERSMITH: VERY WELL, YOUR HONOR. THANK YOU.

01:42PM 6 THIS IS AN EMAIL DATED OCTOBER 19TH, 2010 FROM IAN GIBBONS  
01:42PM 7 TO ELIZABETH HOLMES AND OTHERS, WITH A COPY TO MR. BALWANI AND  
01:42PM 8 OTHERS.

01:42PM 9 THE COURT: ALL RIGHT. THANK YOU.

01:43PM 10 (DEFENDANT'S EXHIBIT 15004 WAS RECEIVED IN EVIDENCE.)

01:43PM 11 THE COURT: AND IF WE CAN SHOW THE JURY THE SECOND  
01:43PM 12 PAGE, I THINK.

01:43PM 13 MR. COOPERSMITH: YES, YOUR HONOR.

01:43PM 14 AND THOSE ARE -- THE SECOND EMAIL, OR THE ONE THAT YOU'RE  
01:43PM 15 SEEING ON THE SECOND PAGE IS FROM DR. GIBBONS TO  
01:43PM 16 ELIZABETH HOLMES, WITH A COPY TO MR. BALWANI AND OTHERS.

01:43PM 17 THE COURT: ALL RIGHT. THANK YOU.

01:43PM 18 MR. COOPERSMITH: YES, YOUR HONOR.

01:43PM 19 THE NEXT EXHIBIT IS 15058.

01:43PM 20 THE COURT: ALL RIGHT.

01:43PM 21 MR. COOPERSMITH: THIS IS BEING OFFERED FOR THE  
01:43PM 22 PURPOSE OF NOTICE TO MR. BALWANI AS WELL.

01:43PM 23 THE COURT: AND THERE'S AN ATTACHMENT, SOME SLIDES.  
01:43PM 24 ARE YOU SEEKING ADMISSION OF THOSE SLIDES IN ADDITION TO THE  
01:43PM 25 FIRST PAGE, WHICH IS THE EMAIL?

01:43PM 1 MR. COOPERSMITH: YES, YOUR HONOR, ALL OF THE  
01:43PM 2 ATTACHMENTS THAT COME WITH EXHIBIT 15058.

01:43PM 3 THE COURT: AND THIS IS OFFERED NOT FOR THE TRUTH OF  
01:44PM 4 THE MATTER ASSERTED, BUT FOR NOTICE?

01:44PM 5 MR. COOPERSMITH: YES, YOUR HONOR.

01:44PM 6 THE COURT: MR. LEACH.

01:44PM 7 MR. LEACH: THAT'S FINE.

01:44PM 8 THE COURT: 15058 IS ADMITTED NOT FOR THE TRUTH OF  
01:44PM 9 THE MATTER ASSERTED, BUT ONLY AS TO THE ISSUE OF NOTICE OF THIS  
01:44PM 10 MATERIAL AS TO MR. BALWANI, NOT FOR THE TRUTH OF THE MATTER  
01:44PM 11 ASSERTED.

01:44PM 12 IT CAN BE PUBLISHED.

01:44PM 13 (DEFENDANT'S EXHIBIT 15058 WAS RECEIVED IN EVIDENCE.)

01:44PM 14 THE COURT: I DON'T THINK WE NEED TO PUBLISH EACH OF  
01:44PM 15 THE SLIDES.

01:44PM 16 MR. COOPERSMITH: NO, YOUR HONOR. I THINK THAT'S  
01:44PM 17 FINE. THANK YOU.

01:44PM 18 BUT THE EMAIL THAT IS NOW ON THE SCREEN IS THE COVER  
01:44PM 19 EMAIL, AND THAT IS AN EMAIL FROM ELIZABETH HOLMES TO  
01:44PM 20 THOMAS BRUER AT THE EMAIL ADDRESS GSKBIO.COM, WITH A COPY TO  
01:44PM 21 MR. BALWANI, AND IT ATTACHES A NUMBER OF ITEMS AS THE COURT  
01:44PM 22 REMARKED.

01:44PM 23 THE COURT: AND THE DATE OF THE EMAIL IS?

01:44PM 24 MR. COOPERSMITH: SORRY, YOUR HONOR. IT'S  
01:44PM 25 DECEMBER 15TH, 2009.

01:44PM 1 THE COURT: OKAY. THANK YOU.

01:45PM 2 NEXT?

01:45PM 3 MR. COOPERSMITH: NEXT IS EXHIBIT 20817.

01:45PM 4 YOUR HONOR, THIS WAS THE SUBJECT OF SOME DISCUSSION WITH  
01:45PM 5 THE COURT EARLIER AS TO WHICH PAGES. WE UNDERSTAND THAT  
01:45PM 6 EXHIBIT NUMBER PAGES 1 THROUGH 4 ARE ADMISSIBLE AND --

01:45PM 7 THE COURT: THIS IS EXHIBIT 6, I BELIEVE, THAT WE  
01:45PM 8 DISCUSSED.

01:45PM 9 MR. COOPERSMITH: THAT'S CORRECT, YOUR HONOR.

01:45PM 10 AND -- YES, YOUR HONOR, EXHIBIT 6 AS THE COURT NOTED IT.

01:45PM 11 AND WE UNDERSTAND THE COURT HAS PREVIOUSLY RULED 1 THROUGH  
01:45PM 12 4 ADMISSIBLE. WE UNDERSTAND PAGES 25 -- I'M SORRY, PAGES 5  
01:45PM 13 THROUGH 25 ARE NOT ADMISSIBLE, AND WE HAD A QUESTION ABOUT 26  
01:45PM 14 TO 54.

01:45PM 15 SO WE'LL PUBLISH WHATEVER THE COURT -- SO AT LEAST 1  
01:45PM 16 THROUGH 4, BUT PERHAPS OTHER PAGES IF THE COURT --

01:46PM 17 THE COURT: WELL, LET ME INDICATE THAT THE ECF PAGES  
01:46PM 18 119 THROUGH 147 WERE NOT ADMISSIBLE PURSUANT TO 403.

01:46PM 19 I THINK THERE WAS A VACUUM AS TO 104 AND 118 IS WHAT OUR  
01:46PM 20 DISCUSSION WAS, AND THOSE, FOR THE SAME REASON, UNDER 403 WOULD  
01:46PM 21 NOT BE ADMITTED.

01:46PM 22 AND THESE ARE ECF PAGES.

01:46PM 23 MR. COOPERSMITH: YES, YOUR HONOR. MY UNDERSTANDING  
01:46PM 24 IS IT WOULD BE ECF PAGES 94 THROUGH 97, WHICH IS PAGES 1  
01:46PM 25 THROUGH 4 IN THE EXHIBIT NUMBER.

01:46PM 1 THE COURT: THAT'S RIGHT. THAT'S RIGHT.

01:46PM 2 MR. COOPERSMITH: YES, YOUR HONOR. WE WOULD JUST

01:46PM 3 ADMIT THOSE PAGES.

01:46PM 4 THE COURT: THOSE ARE ADMITTED.

01:46PM 5 ANYTHING FURTHER, MR. LEACH?

01:46PM 6 MR. LEACH: NO, YOUR HONOR, THANK YOU.

01:46PM 7 THE COURT: THOSE ARE ADMITTED.

01:46PM 8 (DEFENDANT'S EXHIBIT 20817 WAS RECEIVED IN EVIDENCE.)

01:46PM 9 THE COURT: DO YOU WANT TO PUBLISH THOSE?

01:46PM 10 MR. COOPERSMITH: THE FIRST IS A SCREEN PRINT OF AN

01:46PM 11 FDA WEBSITE PAGE TITLED FDA -- I'M SORRY, 510(K) PREMARKET

01:46PM 12 NOTIFICATION AVAILABLE ON THE WEBSITE.

01:47PM 13 IF YOU GO TO THE BOTTOM OF THE EXHIBIT, THE VERY BOTTOM ON

01:47PM 14 THE LEFT, THERE'S A TIME STAMP WHERE IT COMES FROM.

01:47PM 15 IF YOU COULD HIGHLIGHT THAT, MR. ALLEN, ON THE VERY

01:47PM 16 BOTTOM.

01:47PM 17 THAT COMES FROM AN FDA WEBSITE, AND IT WAS RETRIEVED ON

01:47PM 18 MAY 18TH, 2022, FROM THE FDA WEBSITE.

01:47PM 19 YOUR HONOR, MAY I PUBLISH PAGE 3 AS WELL?

01:47PM 20 THE COURT: YES.

01:47PM 21 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:47PM 22 PAGE 3 IS A JULY 7TH, 2015 LETTER FROM THE FDA TO

01:47PM 23 BRAD ARINGTON OF THERANOS REGARDING THE 510(K) CLEARANCE.

01:47PM 24 THE COURT: ALL RIGHT. THANK YOU.

01:47PM 25 MR. COOPERSMITH: YES, YOUR HONOR.

01:47PM 1 NEXT WE HAVE EXHIBIT 20826. THIS IS AN EMAIL CONSISTING  
01:48PM 2 OF THREE PAGES, YOUR HONOR.

01:48PM 3 THE COURT: AND THIS IS OFFERED?

01:48PM 4 MR. COOPERSMITH: THIS IS OFFERED UNDER THE PUBLIC  
01:48PM 5 RECORDS EXCEPTION TO THE HEARSAY RULE, YOUR HONOR.

01:48PM 6 THE COURT: SO THAT YOU'RE ASKING THAT THIS BE  
01:48PM 7 ADMITTED FOR THE TRUTH OF THE MATTER ASSERTED?

01:48PM 8 MR. COOPERSMITH: YES, YOUR HONOR.

01:48PM 9 THE COURT: OR FOR NOTICE?

01:48PM 10 MR. COOPERSMITH: IT'S FOR TRUTH BECAUSE OF THAT  
01:48PM 11 803(8).

01:48PM 12 THE COURT: OKAY.

01:48PM 13 MR. LEACH.

01:48PM 14 MR. LEACH: I THINK THAT APPLIES TO PAGES 2 AND 3,  
01:48PM 15 YOUR HONOR, BUT NUMBER -- SORRY. I DON'T THINK THAT APPLIES TO  
01:48PM 16 PAGE 1.

01:48PM 17 THE COURT: PAGE 1 SEEMS TO BE AN EMAIL.

01:48PM 18 MR. COOPERSMITH: AND THAT'S FINE, YOUR HONOR. WE  
01:48PM 19 CAN ADMIT PAGE 1 FOR NOTICE, AND THEN PAGES 2 AND 3 FOR THE  
01:48PM 20 TRUTH UNDER 803(8).

01:49PM 21 THE COURT: ALL RIGHT. THANK YOU.

01:49PM 22 LADIES AND GENTLEMEN, THIS PAGE WILL BE ADMITTED. PAGE 1,  
01:49PM 23 AS YOU'LL SEE IN JUST A MOMENT, IS AN EMAIL EXCHANGE. THAT IS  
01:49PM 24 ADMITTED NOT FOR THE TRUTH OF THE MATTERS ASSERTED IN THE  
01:49PM 25 EMAIL, BUT ONLY AS TO NOTICE FOR THE DEFENDANT, MR. BALWANI, AS

TO THE ITEMS CONTAINED THEREIN.

THE FOLLOWING TWO PAGES, HOWEVER, ARE ADMITTED UNDER THE PUBLIC RECORDS EXCEPTION, THOSE ARE ADMITTED, AND MAY BE CONSIDERED FOR THE TRUTH OF THE MATTERS ASSERTED THEREIN.

(DEFENDANT'S EXHIBIT 20826 WAS RECEIVED IN EVIDENCE.)

MR. COOPERSMITH: THANK YOU, YOUR HONOR.

AND JUST TO ORIENT US, THE FIRST PAGE ADMITTED FOR NOTICE IS THE EMAIL FROM -- THE SECOND EMAIL IS FROM BRAD ARINGTON TO ELIZABETH HOLMES, SUNNY BALWANI, AND HEATHER KING, AND THAT'S DATED JULY 15TH, 2015.

THE SECOND EMAIL ON THAT PAGE IS FROM PETER TOBIN, WITH AN FDA EMAIL ADDRESS, DATED JULY 15TH, 2015, AND IT SAYS -- WELL, I WON'T READ IT, BUT IT'S, IT'S TO A GROUP OF PEOPLE.

AND THEN IF YOU GO TO THE NEXT PAGE, PAGE 2 IS A LETTER FROM THE U.S. FOOD AND DRUG ADMINISTRATION TO BRAD ARINGTON THAT HAS GOT A HEADING, WAIVER GRANTED NOTIFICATION.

AND THEN COULD I SHOW THE JURY PAGE 3? I GUESS IT'S ON THE SCREEN.

THE COURT: YES.

MR. COOPERSMITH: PAGE 3 IS AN ATTACHMENT THAT DESCRIBES A PARTICULAR TEST SYSTEM.

THE COURT: AND THE DATE OF THE LETTER IS?

MR. COOPERSMITH: THE DATE OF THE LETTER IS JULY 15TH, 2015, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU.

01:50PM 1 MR. COOPERSMITH: THE NEXT EXHIBIT IS EXHIBIT 15029.

01:51PM 2 THIS IS BEING OFFERED, YOUR HONOR, SIMPLY FOR THE FACT OF

01:51PM 3 THE DISCLOSURE OF THE MATTERS IN THE DOCUMENT TO THE U.S. FOOD

01:51PM 4 AND DRUG ADMINISTRATION.

01:51PM 5 THE COURT: HOW MANY PAGES ARE YOU SEEKING TO ADMIT?

01:51PM 6 MR. COOPERSMITH: YOUR HONOR, IT'S PAGES -- ALL OF

01:51PM 7 THE PAGES IN THE EXHIBIT. SO THAT WOULD BE --

01:51PM 8 THE COURT: FROM 47 TO 54?

01:51PM 9 MR. COOPERSMITH: YES, YOUR HONOR, THANK YOU.

01:51PM 10 THE COURT: AND THIS IS NOT FOR THE TRUTH OF THE

01:51PM 11 MATTER ASSERTED, BUT NOTICE ONLY?

01:51PM 12 MR. COOPERSMITH: JUST FOR THE FACT OF DISCLOSURE TO

01:51PM 13 THE FDA.

01:51PM 14 THE COURT: MR. LEACH.

01:51PM 15 MR. LEACH: NO OBJECTION, YOUR HONOR.

01:51PM 16 THE COURT: 15029 IS ADMITTED NOT FOR THE TRUTH OF

01:52PM 17 THE MATTER ASSERTED, LADIES AND GENTLEMEN, BUT ONLY AS TO THE

01:52PM 18 ISSUE OF DISCLOSURE.

01:52PM 19 IS THAT CORRECT?

01:52PM 20 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

01:52PM 21 (DEFENDANT'S EXHIBIT 15029 WAS RECEIVED IN EVIDENCE.)

01:52PM 22 MR. COOPERSMITH: AND THEN TO ORIENT US ON THE FIRST

01:52PM 23 PAGE OF EXHIBIT 15029, THERE'S AN EMAIL FROM ELIZABETH HOLMES

01:52PM 24 TO SALLY HOJVAT AND JOHN HOBSON, AND THEN THERE'S A DATE OF

01:52PM 25 OCTOBER 23RD, 2013.

01:52PM 1 AND THEN IF WE CAN SHOW THE SECOND PAGE OF THE EXHIBIT,  
01:52PM 2 MR. ALLEN.

01:52PM 3 THERE'S A CHART THAT'S TITLED TESTS RUN IN THERANOS'S CLIA  
01:52PM 4 LABORATORY FROM SAMPLES COLLECTED IN THERANOS WELLNESS CENTERS.

01:52PM 5 THE COURT: ALL RIGHT.

01:52PM 6 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:52PM 7 THE NEXT EXHIBIT WE HAVE IS 7286, AND THIS IS OFFERED FOR  
01:53PM 8 NOTICE OF THE MATTERS CONTAINED IN THE EMAILS, IN THE EMAIL.

01:53PM 9 THE COURT: AS TO MR. BALWANI?

01:53PM 10 MR. COOPERSMITH: YES, YOUR HONOR.

01:53PM 11 THE COURT: MR. LEACH.

01:53PM 12 MR. LEACH: NO OBJECTION, YOUR HONOR.

01:53PM 13 THE COURT: THIS IS ADMITTED, LADIES AND GENTLEMEN,  
01:53PM 14 AGAIN, NOT FOR THE TRUTH OF THE MATTER ASSERTED IN THE EXHIBIT,  
01:53PM 15 BUT ONLY AS TO THE ISSUE OF NOTICE AS TO THE CONTENTS, NOTICE  
01:53PM 16 TO MR. BALWANI AS TO THE CONTENTS.

01:53PM 17 (DEFENDANT'S EXHIBIT 7286 WAS RECEIVED IN EVIDENCE.)

01:53PM 18 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:53PM 19 AND EXHIBIT 07286 IS AN EMAIL, THE TOP EMAIL FROM  
01:53PM 20 DANIEL YOUNG TO SUNNY BALWANI, WITH A COPY TO ELIZABETH HOLMES,  
01:53PM 21 DATED APRIL 21ST, 2013.

01:53PM 22 THE COURT: ALL RIGHT. THANK YOU.

01:53PM 23 MR. COOPERSMITH: THE NEXT EXHIBIT IS 20827.

01:54PM 24 THIS IS ALSO BEING OFFERED FOR THE NOTICE OF THE SUBJECT  
01:54PM 25 MATTER, CLINICAL LAB DIRECTOR APPLICATION.

01:54PM 1 THE COURT: NOTICE AS TO?

01:54PM 2 MR. COOPERSMITH: THE MATTER IN THE EMAIL, WHICH IS

01:54PM 3 THE SUBJECT MATTER OF CLINICAL LAB DIRECTOR APPLICATIONS.

01:54PM 4 THE COURT: AS TO MR. BALWANI?

01:54PM 5 MR. COOPERSMITH: YES, YOUR HONOR.

01:54PM 6 THE COURT: EXCUSE ME.

01:54PM 7 MR. LEACH.

01:54PM 8 MR. LEACH: WITH THAT NOTATION, YOUR HONOR, NO

01:54PM 9 OBJECTION.

01:54PM 10 THE COURT: THIS WILL BE ADMITTED THEN NOT FOR THE

01:54PM 11 TRUTH OF THE MATTERS ASSERTED, LADIES AND GENTLEMEN, IN THE

01:54PM 12 EMAILS, BUT ONLY AS TO THE ISSUE OF NOTICE OF THE SUBJECT OF

01:54PM 13 THE EMAIL AS TO MR. BALWANI.

01:54PM 14 (DEFENDANT'S EXHIBIT 20827 WAS RECEIVED IN EVIDENCE.)

01:54PM 15 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:54PM 16 AND THIS IS -- WHAT IS ON THE SCREEN AND ADMITTED FOR THAT

01:55PM 17 PURPOSE IS AN EMAIL FROM, AT THE TOP, SURAJ SAKSENA TO

01:55PM 18 SUNNY BALWANI, DATED JULY 27TH, 2015.

01:55PM 19 NEXT, YOUR HONOR, IS EXHIBIT 20830.

01:55PM 20 THE COURT: ALL RIGHT.

01:55PM 21 MR. COOPERSMITH: EXHIBIT 20830 IS BEING OFFERED

01:55PM 22 UNDER THE PUBLIC RECORDS EXCEPTION, IT'S A PATENT APPLICATION.

01:55PM 23 AND, YOUR HONOR, THIS WAS ANOTHER ONE, IT WAS, IT WAS --

01:55PM 24 IT WAS KNOWN AS EXHIBIT NUMBER 7 IN PRIOR DISCUSSIONS WITH THE

01:55PM 25 COURT, BUT THIS -- WE HAD SOME CLARIFYING QUESTIONS WITH THE

01:55PM 1 COURT EARLIER ABOUT WHICH PAGES WOULD BE ADMITTED.

01:56PM 2 THE COURT: IS IT EXHIBIT 7 OR EXHIBIT 9?

01:56PM 3 MR. COOPERSMITH: I THINK IT WAS KNOWN AS EXHIBIT 7,

01:56PM 4 WHICH IN EXHIBIT NUMBERS IS 20830.

01:56PM 5 THE COURT: MY RECOLLECTION IS THAT IT'S 9 FOUND

01:56PM 6 IN --

01:56PM 7 MR. COOPERSMITH: LET ME CHECK THAT, YOUR HONOR.

01:56PM 8 THE COURT: -- IN DOCKET 1470-3.

01:56PM 9 MR. COOPERSMITH: YES, YOUR HONOR, MY APOLOGIES, IT

01:56PM 10 IS NUMBER 9.

01:56PM 11 THE COURT: THANK YOU.

01:56PM 12 AND THE COURT'S ORDER REFERRING TO 1475, AND I'LL REFER

01:56PM 13 THE PARTIES BACK TO THE COURT'S ORDER IN THAT REGARD.

01:56PM 14 MR. COOPERSMITH: YOUR HONOR, TO CLARIFY, WHAT THE

01:56PM 15 ORDER SAYS IS WHAT IS ADMISSIBLE?

01:56PM 16 THE COURT: YES.

01:56PM 17 MR. COOPERSMITH: OKAY. THANK YOU. THAT'S HELPFUL.

01:56PM 18 IN THAT CASE, YOUR HONOR, WE WOULD OFFER THE DOCUMENT

01:56PM 19 UNDER THE PUBLIC RECORDS EXCEPTION, AND WE OFFER ON THE EXHIBIT

01:56PM 20 NUMBER PAGES, PAGES 1 THROUGH 4, PAGES 5 THROUGH -- I'M SORRY.

01:57PM 21 THE COURT: SO LET'S CORRESPOND THOSE TO THE ECF

01:57PM 22 PAGES.

01:57PM 23 MR. COOPERSMITH: IT MIGHT BE EASIER.

01:57PM 24 THE COURT: YES. THE ECF PAGES ARE 162 THROUGH 169,

01:57PM 25 AND 216 AND 217, WHICH ARE THE FINAL RECEIPT PAGES, IF YOU

01:57PM 1 WILL.

01:57PM 2 MR. COOPERSMITH: 216 AND 217, YOUR HONOR?

01:57PM 3 THE COURT: RIGHT.

01:57PM 4 MR. COOPERSMITH: YES, THANK YOU.

01:57PM 5 SO THOSE ARE BEING OFFERED FOR THE REASONS THAT I STATED.

01:57PM 6 THE COURT: OKAY.

01:57PM 7 MR. LEACH: YOUR HONOR, I UNDERSTOOD THIS WAS BEING

01:57PM 8 ORDER FOR A NONHEARSAY PURPOSE, THE MERE FACT OF AN

01:57PM 9 APPLICATION, AND NOT FOR THE TRUTH OF THE MATTERS ASSERTED IN

01:57PM 10 THE APPLICATION.

01:57PM 11 IF THAT IS THE LIMIT, WE HAVE NO OBJECTION.

01:57PM 12 THE COURT: THAT'S WHAT I THOUGHT YOU WERE DOING,

01:57PM 13 MR. COOPERSMITH.

01:57PM 14 MR. COOPERSMITH: YES, YOUR HONOR, THAT'S FINE.

01:57PM 15 THE COURT: THESE PAGES, LADIES AND GENTLEMEN, THIS

01:58PM 16 EXHIBIT IS ONCE AGAIN ADMITTED NOT FOR THE TRUTH OF ANYTHING

01:58PM 17 INDICATED IN THE EXHIBITS, BUT JUST FOR THE FACT OF

01:58PM 18 ESTABLISHING AN APPLICATION WAS FILED.

01:58PM 19 (DEFENDANT'S EXHIBIT 20830 WAS RECEIVED IN EVIDENCE.)

01:58PM 20 MR. COOPERSMITH: YES, YOUR HONOR.

01:58PM 21 TO ORIENT US ON THE FIRST PAGE OF 20830, IT'S A DOCUMENT

01:58PM 22 ENTITLED PROVISIONAL APPLICATION FOR PATENT COVER SHEET, AND IT

01:58PM 23 HAS CERTAIN INVENTOR NAMES, AND THEN IT HAS A TITLE, THE TITLE

01:58PM 24 OF INVENTION READS, DEVICES, METHODS, AND SYSTEMS FOR REDUCING

01:58PM 25 SAMPLE VOLUME.

01:58PM 1 AND THEN IF WE CAN GO TO THE SECOND PAGE BRIEFLY, THERE'S  
01:58PM 2 A DATE OF OCTOBER 8TH, 2013.

01:58PM 3 THE COURT: ALL RIGHT.

01:59PM 4 MR. COOPERSMITH: YOUR HONOR, THAT, I BELIEVE,  
01:59PM 5 EXHAUSTS THE EXHIBITS THAT WERE ADMITTED UNDER THE COURT'S  
01:59PM 6 RULING.

01:59PM 7 THERE WAS ONE OTHER THAT WE'RE NOT OFFERING, WHICH IS  
01:59PM 8 7098, BUT WE WON'T OFFER THAT.

01:59PM 9 THE COURT: OKAY.

01:59PM 10 MR. COOPERSMITH: BUT THERE ARE TWO OTHER EXHIBITS,  
01:59PM 11 YOUR HONOR, THAT ARE ADMISSIBLE PURSUANT TO A STIPULATION OF  
01:59PM 12 THE PARTIES, AND THOSE STIPULATIONS ARE AT DOCKET 1472 AND  
01:59PM 13 1473.

01:59PM 14 WE ASK THAT THE COURT READ THE STIPULATION TO THE JURY,  
01:59PM 15 AND YOU CAN --

01:59PM 16 THE COURT: I'M HAPPY TO DO THAT. IF YOU WOULD HAND  
01:59PM 17 ONE UP TO ME, THAT WOULD BE TERRIFIC. OH, THANK YOU SO MUCH.

01:59PM 18 CAN I JUST INQUIRE IF THE GOVERNMENT HAS A COPY OF THIS?

01:59PM 19 MR. LEACH: I DON'T, YOUR HONOR. I'LL TRY TO LOOK  
01:59PM 20 IT UP.

01:59PM 21 MR. COOPERSMITH: CAN I --

01:59PM 22 THE COURT: DO YOU -- HOW MANY COPIES DO YOU HAVE?

01:59PM 23 MR. COOPERSMITH: I HAVE MULTIPLE COPIES ACTUALLY.

02:00PM 24 (HANDING.)

02:00PM 25 MR. LEACH: THANK YOU.

02:00PM 1 MR. COOPERSMITH: MY TEAM CAN BE VERY EFFICIENT.

02:00PM 2 (LAUGHTER.)

02:00PM 3 MR. COOPERSMITH: OH, AND THERE'S ANOTHER ONE,  
02:00PM 4 YOUR HONOR.

02:00PM 5 THE COURT: ALL RIGHT.

02:00PM 6 LADIES AND GENTLEMEN, I'M GOING TO READ TO YOU NOW TWO  
02:00PM 7 STIPULATIONS THAT THE PARTIES HAVE AGREED TO REGARDING CERTAIN  
02:00PM 8 EVIDENCE, AND YOU'LL HAVE THE STIPULATION FOR YOU.

02:00PM 9 THE FIRST STIPULATION IS AS FOLLOWS:

02:00PM 10 THE UNITED STATES AND RAMESH BALWANI, THROUGH UNDERSIGNED  
02:00PM 11 COUNSEL, HEREBY STIPULATE AND AGREE TO THE ADMISSION OF TRIAL  
02:00PM 12 EXHIBIT 20073A INTO EVIDENCE; TRIAL EXHIBIT 20073A IS A NATIVE  
02:01PM 13 EXCEL SPREADSHEET PRODUCED BY SOUTHWEST CONTEMPORARY WOMEN'S  
02:01PM 14 CLINIC, SWCWC, AND REFLECTS ALL SWCWC PATIENTS WHO RECEIVED  
02:01PM 15 THERANOS BLOOD TESTING RESULTS AFTER AUGUST 2015.

02:01PM 16 DID I READ THAT STIPULATION CORRECTLY, MR. COOPERSMITH?

02:01PM 17 MR. COOPERSMITH: YES, YOUR HONOR.

02:01PM 18 THE COURT: MR. LEACH?

02:01PM 19 MR. LEACH: YES, YOUR HONOR.

02:01PM 20 THE COURT: ALL RIGHT. THANK YOU.

02:01PM 21 THAT EXHIBIT IS ADMITTED PURSUANT TO THE STIPULATION.

02:01PM 22 THE NEXT STIPULATION, LADIES AND GENTLEMEN, IS AS FOLLOWS:

02:01PM 23 THE PARTIES STIPULATE THAT THE DOCUMENTS BEARING BATES  
02:01PM 24 NUMBERS NUNN THERANOS 0002301 THROUGH NUNN THERANOS 0002304 AND  
02:02PM 25 NUNN THERANOS 0000855 THROUGH NUNN THERANOS 0000950 ARE TRUE

02:02PM 1 AND CORRECT COPIES OF DOCUMENTS PROVIDED TO SAM NUNN BY  
02:02PM 2 THERANOS AND PRODUCED BY HIM IN RESPONSE TO A SUBPOENA.

02:02PM 3 THE PARTIES STIPULATE THAT THE DOCUMENTS ARE ADMISSIBLE  
02:02PM 4 FOR THIS PURPOSE.

02:02PM 5 DID I READ THAT STIPULATION CORRECTLY?

02:02PM 6 MR. COOPERSMITH: YES, YOUR HONOR.

02:02PM 7 AND THE EXHIBITS THAT GO WITH THAT STIPULATION, MAY I  
02:02PM 8 OFFER THOSE AT THIS TIME?

02:02PM 9 THE COURT: MR. LEACH?

02:02PM 10 MR. LEACH: YOU READ THE STIPULATION CORRECTLY,  
02:02PM 11 YOUR HONOR, AND THEY MAY BE ADMITTED.

02:02PM 12 THE COURT: THANK YOU. THOSE ARE ADMITTED.

02:02PM 13 AND YOU'D LIKE TO DISPLAY THOSE BRIEFLY?

02:02PM 14 MR. COOPERSMITH: YES, YOUR HONOR.

02:02PM 15 AND JUST FOR THE RECORD, THE STIPULATION THAT THE COURT  
02:02PM 16 READ HAS CERTAIN BATES NUMBERS, AND THE EXHIBIT NUMBERS ARE  
02:03PM 17 20788 AND 20145. AND THOSE ARE THE EXHIBITS THAT WE OFFER  
02:03PM 18 PURSUANT TO THAT STIPULATION.

02:03PM 19 THE COURT: ALL RIGHT. THANK YOU. THOSE ARE  
02:03PM 20 ADMITTED.

02:03PM 21 (DEFENDANT'S EXHIBITS 20788 AND 20145 WERE RECEIVED IN  
02:03PM 22 EVIDENCE.)

02:03PM 23 MR. COOPERSMITH: AND IF WE CAN BRIEFLY DISPLAY THEM  
02:03PM 24 TO THE JURY?

02:03PM 25 THE COURT: SURE, LET'S BRIEFLY DO THAT.

02:03PM 1 MR. COOPERSMITH: THIS IS 20788. IT'S AN EMAIL FROM  
02:03PM 2 TEMPE STEPHEN DATED JULY 15TH, 2014, TO SAM NUNN, SUBJECT  
02:03PM 3 THERANOS FINANCIALS.

02:03PM 4 THE COURT: OKAY. THANK YOU.

02:03PM 5 MR. COOPERSMITH: AND THEN THE OTHER EXHIBIT IS  
02:03PM 6 20145. IT IS A PROJECTED STATEMENT OF INCOME WITH SOME  
02:03PM 7 HANDWRITING, AND IT DOES NOT HAVE A DATE ON THE DOCUMENT, BUT  
02:03PM 8 IT DOES HAVE COLUMNS LABELLED 2014 AND 2015.

02:03PM 9 THE COURT: ALL RIGHT. THANK YOU.

02:03PM 10 MR. COOPERSMITH: THANK YOU.

02:03PM 11 AND I THINK -- IF I COULD HAVE ONE MOMENT TO CONFER?

02:03PM 12 THE COURT: YES.

02:04PM 13 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

02:04PM 14 MR. COOPERSMITH: YOUR HONOR, JUST TO CONFIRM,  
02:04PM 15 EXHIBIT 20073A, APPLE, THAT IS ADMITTED IN EVIDENCE?

02:04PM 16 THE COURT: YES.

02:04PM 17 (DEFENDANT'S EXHIBIT 20073A WAS RECEIVED IN EVIDENCE.)

02:04PM 18 MR. COOPERSMITH: AND CAN WE BRIEFLY DISPLAY THAT  
02:04PM 19 FIRST PAGE?

02:04PM 20 THE COURT: SURE.

02:04PM 21 MR. COOPERSMITH: IT'S A SPREADSHEET WITH A NUMBER  
02:04PM 22 OF ENTRIES IN NATIVE FORM WHERE THERE'S A COLUMN THAT SAYS  
02:04PM 23 PRACTICE CODE AND IT SAYS SWC ON THE PAGE WE'RE SEEING, AND  
02:04PM 24 THEN FACILITY NAME TO READ THERANOS, AND THEN THERE'S DATES IN  
02:05PM 25 THE COLUMN, COLUMN C. THAT'S THE EXHIBIT.

02:05PM 1           THANK YOU, YOUR HONOR.

02:05PM 2           THE COURT: ALL RIGHT. THANK YOU.

02:05PM 3           MR. COOPERSMITH: WITH THAT, YOUR HONOR, THE DEFENSE  
02:05PM 4           RESTS.

02:05PM 5           THE COURT: ALL RIGHT. THANK YOU.

02:05PM 6           LADIES AND GENTLEMEN, THE DEFENSE HAS NOW RESTED IN THE  
02:05PM 7           CASE.

02:05PM 8           I SEE IT'S PAST 2:00 O'CLOCK AND I TOLD YOU WE WOULD BREAK  
02:05PM 9           AT 2:00 O'CLOCK.

02:05PM 10          I'M GOING TO HAVE THE LAWYERS STAY HERE AND I'M GOING TO  
02:05PM 11          TALK TO THEM ABOUT WHAT OUR NEXT STEPS ARE, INCLUDING WHETHER  
02:05PM 12          OR NOT THE GOVERNMENT WILL HAVE A REBUTTAL CASE.

02:05PM 13          SO LET'S RECESS FOR TODAY. WE WILL RECESS FOR TODAY. I  
02:05PM 14          WILL ASK THAT, FOR NOW, YOU SCHEDULE YOURSELVES SUCH THAT YOU  
02:05PM 15          COULD RETURN TOMORROW AT 9:00 A.M., AT 9:00 A.M., UNLESS YOU  
02:05PM 16          HEAR OTHERWISE.

02:05PM 17          I'M GOING TO TALK TO THE LAWYERS ABOUT SCHEDULING, AND OUR  
02:05PM 18          WONDERFUL COURTROOM DEPUTY WILL BE IN TOUCH WITH YOU AS TO  
02:06PM 19          WHETHER OR NOT THERE'S ANY CHANGES IN THE SCHEDULE.

02:06PM 20          DURING THE BREAK, PLEASE -- AGAIN, I REMIND YOU OF THE  
02:06PM 21          ADMONITION. DO NOT READ, LISTEN TO, OR IN ANY WAY TRY TO LEARN  
02:06PM 22          ANYTHING ABOUT THIS CASE UNTIL THE CASE HAS BEEN SUBMITTED TO  
02:06PM 23          YOU FOR YOUR DELIBERATIONS.

02:06PM 24          AS I'VE SAID TO YOU, AS OF NOW THE DEFENSE HAS RESTED. AS  
02:06PM 25          OF NOW, YOU HAVE ALL OF THE EVIDENCE YOU MAY NEED.

02:06PM 1 I NEED TO DISCUSS FURTHER STEPS WITH THE LAWYERS BEFORE WE  
02:06PM 2 GO FURTHER.

02:06PM 3 SO WE MAY HAVE ADDITIONAL EVIDENCE TO PRESENT TO YOU, BUT  
02:06PM 4 WE'LL SEE WHAT HAPPENS.

02:06PM 5 SO YOU'LL BE IN RECESS NOW. THANK YOU VERY MUCH.

02:06PM 6 REMEMBER THE ADMONITION.

02:06PM 7 WE'LL SEE YOU TOMORROW MORNING, UNLESS YOU HEAR OTHERWISE.  
02:06PM 8 THANK YOU.

02:07PM 9 (JURY OUT AT 2:07 P.M.)

02:07PM 10 THE COURT: PLEASE BE SEATED. THANK YOU. THE  
02:07PM 11 RECORD SHOULD REFLECT OUR JURY HAS LEFT FOR THE DAY AND ALL  
02:07PM 12 COUNSEL AND MR. BALWANI REMAIN.

02:07PM 13 MR. COOPERSMITH.

02:07PM 14 MR. COOPERSMITH: YES. AT THIS TIME WE RENEW OUR  
02:07PM 15 RULE 29 MOTION AND WANT TO MAKE SURE THAT'S IN THE RECORD AND  
02:07PM 16 IT'S REFLECTED.

02:07PM 17 WHAT WE THINK MAKES SENSE IS TO HAVE THE COURT RESERVE  
02:07PM 18 UNTIL AFTER THE VERDICT, AND THEN WE CAN SET A BRIEFING  
02:07PM 19 SCHEDULE OR WHATEVER IS NECESSARY, IF IT'S NECESSARY.

02:07PM 20 THE COURT: SURE.

02:07PM 21 MR. COOPERSMITH: THANK YOU. THAT'S OUR REQUEST.

02:07PM 22 THE COURT: I WILL NOTE THAT YOU'VE MADE A RULE 29  
02:07PM 23 MOTION, AND I THINK YOU MADE IT PREVIOUSLY AT THE CLOSE OF THE  
02:07PM 24 GOVERNMENT'S CASE.

02:07PM 25 MR. COOPERSMITH: YES, YOUR HONOR.

02:07PM 1 THE COURT: AND I'LL RECOGNIZE THE RENEWAL.

02:07PM 2 THE COURT WILL RESERVE JUDGMENT ON THAT UNTIL AFTER ANY

02:07PM 3 VERDICT THAT MIGHT BE ENTERED, AND WE CAN TALK ABOUT

02:07PM 4 SCHEDULING.

02:07PM 5 WE WERE GOING TO HAVE A DISCUSSION ABOUT WHETHER OR NOT

02:08PM 6 THERE'S GOING TO BE REBUTTAL.

02:08PM 7 I'M GOING TO STEP DOWN NOW. AS YOU KNOW, I THINK I TOLD

02:08PM 8 YOU, I HAVE ANOTHER MATTER TO TAKE CARE OF. I THINK IT'S

02:08PM 9 REMOTE.

02:08PM 10 BUT WHY DON'T I STEP DOWN AND WE'LL SEE COUNSEL IN

02:08PM 11 ABOUT -- WELL, WHY DON'T I SAY 3:00 O'CLOCK JUST TO BE SAFE, IN

02:08PM 12 ABOUT ANOTHER 50 MINUTES IF THAT WORKS FOR YOU.

02:08PM 13 MR. COOPERSMITH: YES, YOUR HONOR.

02:08PM 14 THE COURT: OKAY. GREAT. THANK YOU.

02:08PM 15 (RECESS FROM 2:08 P.M. UNTIL 3:14 P.M.)

03:14PM 16 (JURY OUT AT 3:14 P.M.)

03:14PM 17 THE COURT: WE'RE BACK ON THE RECORD OUTSIDE OF THE

03:14PM 18 PRESENCE OF THE JURY.

03:15PM 19 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

03:15PM 20 LET ME SAY, FIRST OF ALL, I DID RECEIVE A COPY OF THE WORK

03:15PM 21 IN PROGRESS JURY INSTRUCTIONS, AND WE CAN MAYBE CHAT ABOUT

03:15PM 22 THOSE IN A MOMENT.

03:15PM 23 BUT LET ME JUST TURN TO THE PARTIES AS TO THE NEXT STEPS.

03:15PM 24 I THINK THAT'S THE GOVERNMENT'S CALL.

03:15PM 25 MAY I HAVE THE PARTIES COME FORWARD.

03:15PM 1 MR. LEACH: THANK YOU, YOUR HONOR.

03:15PM 2 I THINK YESTERDAY THE GOVERNMENT INDICATED THAT BEFORE  
03:15PM 3 MAKING A DECISION ABOUT WHETHER TO PUT ON A REBUTTAL CASE, IT  
03:15PM 4 WOULD BE HELPFUL TO HAVE A DISCUSSION ABOUT THE ADVERSE  
03:15PM 5 INFERENCE INSTRUCTION THAT THE DEFENSE IS REQUESTING.

03:16PM 6 WE'RE PREPARED TO HAVE THAT DIALOGUE NOW, AND I THINK THAT  
03:16PM 7 WOULD INFORM THE GOVERNMENT'S VIEW ABOUT WHETHER ANY FORM OF  
03:16PM 8 REBUTTAL IS APPROPRIATE.

03:16PM 9 THE COURT: OKAY. ALL RIGHT. THANK YOU.

03:16PM 10 MR. COOPERSMITH: YOUR HONOR, MR. BRECHER IS  
03:16PM 11 PREPARED TO ADDRESS THAT ISSUE.

03:16PM 12 THE COURT: OKAY.

03:16PM 13 YES, MR. BRECHER.

03:16PM 14 MR. BRECHER: OH, I DIDN'T KNOW IF YOU WANTED TO  
03:16PM 15 START WITH THE DEFENSE OR THE GOVERNMENT ON THAT.

03:16PM 16 SO, YOUR HONOR, WE HAVE PROPOSED AN INSTRUCTION, AN  
03:16PM 17 ADVERSE INFERENCE INSTRUCTION. I THINK WE'RE HAPPY TO RETITLE  
03:16PM 18 IT A MISSING EVIDENCE INSTRUCTION, OR FRANKLY, ANYTHING ELSE.

03:16PM 19 AS YOU KNOW, WE HAD FILED A PLEADING THAT ADOPTED  
03:17PM 20 MS. HOLMES'S MOTION TO SUPPRESS PATIENT COUNT EVIDENCE AND  
03:17PM 21 ANECDOTAL EVIDENCE, AND THE COURT HAS ISSUED A RULING, AND WE  
03:17PM 22 STAND BY OUR MOTION, PARTICULARLY NOW THAT THE COURT HAS HAD AN  
03:17PM 23 OPPORTUNITY TO HEAR FROM MR. SONNIER.

03:17PM 24 BUT I THINK WHEN IT COMES TO THE INSTRUCTION, WHICH IS A  
03:17PM 25 LESSER REMEDY, I DO THINK THAT THAT INSTRUCTION IS IMPLICATED

03:17PM 1 BY THESE FACTS.

03:17PM 2 AND WE'VE HEARD A COUPLE OF ISSUES, TWO OF THEM PRIMARILY,  
03:17PM 3 THAT ARE SORT OF PURE QUESTIONS OF LAW FROM THE GOVERNMENT.

03:17PM 4 BUT OTHERWISE I'M NOT QUITE SURE OF THE GOVERNMENT'S  
03:17PM 5 POSITION OTHER THAN THEY OPPOSE THE INSTRUCTION.

03:17PM 6 BUT I KNOW THAT IN THEIR MOTION TO EXCLUDE MR. SONNIER'S  
03:17PM 7 TESTIMONY, THE GOVERNMENT SUGGESTED THAT AN ADVERSE INFERENCE  
03:17PM 8 INSTRUCTION WAS APPROPRIATE ONLY IN CASES OF BAD FAITH.

03:17PM 9 THAT'S NOT CORRECT.

03:17PM 10 LATER IN THEIR REPLY BRIEF, IN A FOOTNOTE THEY SAID THAT  
03:17PM 11 SUCH AN INSTRUCTION WAS ONLY APPROPRIATE IN CASES IN WHICH THE  
03:17PM 12 GOVERNMENT HAD ACTUALLY COME INTO POSSESSION OF THE EVIDENCE  
03:18PM 13 AND IT WAS LOST OR DESTROYED IN THE GOVERNMENT'S POSSESSION.

03:18PM 14 THAT, TOO, AS FAR AS I READ NINTH CIRCUIT LAW, IS NOT  
03:18PM 15 CORRECT.

03:18PM 16 I'M HAPPY TO ADDRESS BOTH OF THOSE LEGAL ISSUES, BUT I  
03:18PM 17 DON'T KNOW WHAT WOULD BE MOST HELPFUL FOR THE COURT TO BEGIN  
03:18PM 18 WITH.

03:18PM 19 THE COURT: WELL, LET ME -- THANK YOU.

03:18PM 20 LET ME ASK FIRST A THRESHOLD QUESTION. ARE YOU ARGUING IN  
03:18PM 21 ANY WAY THAT THERE HAS BEEN A CONSTITUTIONAL DUE PROCESS  
03:18PM 22 VIOLATION HERE?

03:18PM 23 MR. BRECHER: WELL, YOUR HONOR, WE DID ARGUE THAT IN  
03:18PM 24 OUR MOTION TO SUPPRESS, AND WE STAND BY THAT ARGUMENT.

03:18PM 25 SO I DON'T WANT TO DISCLAIM IT, BUT I DON'T THINK THAT'S

03:18PM 1 NECESSARY FOR THE INSTRUCTION THAT WE'RE REQUESTING HERE.

03:18PM 2 THE COURT: OKAY.

03:18PM 3 MR. BRECHER: SO THAT'S A SECOND -- I THINK THAT'S A  
03:18PM 4 TANGENTIAL ISSUE.

03:18PM 5 THE COURT: OKAY. THANK YOU. I JUST WANT TO MAKE  
03:18PM 6 CLEAR THAT YOU'RE NOT ASKING FOR THAT, BECAUSE THAT DOES RAISE  
03:18PM 7 DIFFERENT STANDARDS AS YOU KNOW.

03:18PM 8 MR. BRECHER: YES.

03:18PM 9 THE COURT: SO AS TO THE, I'LL JUST CALL IT ADVERSE  
03:19PM 10 INSTRUCTION, I DON'T THINK THAT WE HAVE TO HAVE A CONVERSATION  
03:19PM 11 ABOUT WHETHER OR NOT BAD FAITH IS GOING TO BE SHOWN ON NOT.  
03:19PM 12 THAT'S NOT SOMETHING THAT I NEED SOME ASSISTANCE ON.

03:19PM 13 BUT WHAT I AM INTERESTED IN, AND I THINK I TOUCHED ON  
03:19PM 14 YESTERDAY, WE SHOULD LOOK AT LOUD HAWK AND THEN JUDGE KENNEDY'S  
03:19PM 15 CONCURRENCE WHICH I THINK DOES CONTROL THE FACTORS AND THE  
03:19PM 16 BALANCING TEST AND THE BALANCING THAT THE COURT NEEDS TO ENGAGE  
03:19PM 17 IN FOR PURPOSES OF DETERMINING WHETHER OR NOT THE EVIDENCE  
03:19PM 18 SUPPORTS SUCH AN INSTRUCTION.

03:19PM 19 MR. BRECHER: THAT'S CORRECT, YOUR HONOR. AT LEAST  
03:19PM 20 UP THROUGH 2018, AS I READ THE NINTH CIRCUIT CASE LAW, THAT  
03:19PM 21 STANDARD, THAT BALANCING TEST HAS BEEN ELABORATED TO SOME  
03:19PM 22 EXTENT.

03:19PM 23 BUT THE CORE HOLDING REMAINS JUDGE KENNEDY'S CONTROLLING  
03:19PM 24 CONCURRENCE FROM LOUD HAWK, TWO WORDS.

03:20PM 25 MR. LEACH: I AGREE THAT'S THE APPROPRIATE STANDARD,

03:20PM 1 YOUR HONOR.

03:20PM 2 THE COURT: OKAY.

03:20PM 3 MR. LEACH: AND THAT'S THE STANDARD CITED IN THE  
03:20PM 4 NINTH CIRCUIT MODEL AT 3.19 FOR LOST OR DESTROYED EVIDENCE.

03:20PM 5 THE COURT: ALL RIGHT. LET ME TURN TO YOU,  
03:20PM 6 MR. BRECHER. WHY DO YOU FEEL, AND DO THE FACTS IN THIS CASE  
03:20PM 7 SUGGEST THAT THE COURT SHOULD GIVE SUCH AN INSTRUCTION?

03:20PM 8 MR. BRECHER: THANK YOU, YOUR HONOR.

03:20PM 9 I WANT TO LEVEL-SET ON WHAT THE STANDARD IS, BECAUSE I  
03:20PM 10 RECALL DURING OUR CONVERSATION, I BELIEVE IT WAS YESTERDAY,  
03:20PM 11 MS. VOLKAR HAD SUGGESTED THAT BECAUSE OUR PROPOSED LANGUAGE  
03:20PM 12 DEVIATES FROM THE MODEL INSTRUCTION BY USING THE WORD  
03:20PM 13 "NEGLIGENTLY" OR "RECKLESSLY" INSTEAD OF "INTENTIONALLY," THAT  
03:20PM 14 THAT'S SOME SORT OF DEVIATION FROM NINTH CIRCUIT LAW, AND  
03:20PM 15 THAT'S NOT THE CASE.

03:20PM 16 AS THE COURT KNOWS FROM THE SIVILLA DECISION WHICH WE  
03:20PM 17 CITED SEVERAL TIMES IN OUR PLEADINGS IN DOCKET 1476, THE  
03:21PM 18 NINTH CIRCUIT HAS REVERSED CONVICTIONS FOR THE FAILURE TO GIVE  
03:21PM 19 THE INSTRUCTION, EVEN IN A CASE WHERE, ONE, THE GOVERNMENT'S  
03:21PM 20 CONDUCT WAS NEGLIGENT, AND TWO, THE EXCULPATORY VALUE OF THE  
03:21PM 21 EVIDENCE WAS SPECULATIVE AT BEST.

03:21PM 22 I THINK THE COURT WILL RECALL FROM FEBRUARY 8TH,  
03:21PM 23 MR. COOPERSMITH HAD A DIALOGUE WITH YOUR HONOR ABOUT THIS CASE,  
03:21PM 24 AND THERE IT WAS A TRUCK THAT WAS IMPOUNDED AT THE BORDER THAT  
03:21PM 25 HAD SOME DRUGS HIDDEN IN A COMPARTMENT.

03:21PM 1 AND THEN LATER, IN CONTRAVENTION OF A COURT ORDER, THAT  
03:21PM 2 TRUCK WAS INADVERTENTLY SOLD AT AUCTION, AND THEN ANY POTENTIAL  
03:21PM 3 EXCULPATORY EVIDENCE WAS DESTROYED.

03:21PM 4 IN THIS CASE, I THINK, THE ISSUES ARE -- OBVIOUSLY THE  
03:21PM 5 FACTS ARE QUITE DIFFERENT, BUT I THINK THE STANDARDS AND THE  
03:21PM 6 PRINCIPLES APPLY THE SAME.

03:21PM 7 THE ISSUE IS, WAS THE GOVERNMENT NEGLIGENT?

03:21PM 8 WE KNOW FROM OTHER MODEL INSTRUCTIONS, BOTH IN THE  
03:21PM 9 CRIMINAL CONTEXT AND THE CIVIL -- AND I THINK THIS CLOSELY  
03:22PM 10 TRACKS THE MODEL PENAL CODE OR THE COMMON LAW DEFINITION --  
03:22PM 11 THAT NEGLIGENCE IS JUST THE FAILURE TO DO SOMETHING OR THE  
03:22PM 12 DOING OF SOMETHING THAT A REASONABLY PRUDENT PERSON WOULD NOT  
03:22PM 13 DO UNDER THOSE -- UNDER SIMILAR CIRCUMSTANCES.

03:22PM 14 AND RECKLESSNESS, AS THE COURT KNOWS, IS PROCEEDING ON A  
03:22PM 15 COURSE OF CONDUCT DESPITE ACTUAL KNOWLEDGE OF SOME RISK OR SOME  
03:22PM 16 DANGER.

03:22PM 17 IN THIS CASE I THINK WE'VE PRESENTED AT LEAST THE FACTUAL  
03:22PM 18 PREDICATE FOR MR. COOPERSMITH TO ARGUE EITHER OF THOSE. ONE,  
03:22PM 19 THAT A REASONABLY PRUDENT PERSON SHOULD HAVE SEIZED THE LIS  
03:22PM 20 PRODUCTION EQUIPMENT AND HARD DRIVES; AND TWO, THAT THE  
03:22PM 21 GOVERNMENT, HAVING BEEN EXPRESSLY ADVISED THAT THAT WAS A  
03:22PM 22 POTENTIAL ROUTE GOING FORWARD, SHOULD HAVE UNDERTAKEN THAT  
03:22PM 23 STEP.

03:22PM 24 AND I WANT TO POINT OUT, YOUR HONOR, THAT OUR PROPOSED  
03:22PM 25 INSTRUCTION DOESN'T REQUIRE, IT DOESN'T ASK THE COURT TO TELL

03:22PM 1 THE JURY THESE ARE THE FACTS THAT THEY MUST CONCLUDE OR THAT  
03:22PM 2 THE GOVERNMENT WAS NEGLIGENT OR WAS RECKLESS.

03:23PM 3 YOU MAY RECALL THERE WAS A NINTH CIRCUIT DECISION CALLED  
03:23PM 4 FRIES WHICH WE CITE I BELIEVE IN A PRIOR PLEADING, AND IF NOT,  
03:23PM 5 I'M HAPPY TO PROVIDE THE COURT WITH THAT CITATION.

03:23PM 6 AND THE ISSUE THERE WAS THE DEFENDANT HAD REQUESTED SOME  
03:23PM 7 MANDATORY INSTRUCTION ABOUT THE GOVERNMENT'S FAILURE TO RECORD  
03:23PM 8 A CRITICAL PHONE CONVERSATION, AND THE DEFENDANT SAID, THE  
03:23PM 9 GOVERNMENT FAILED TO DO THIS, YOU MUST CONSIDER THIS IN YOUR  
03:23PM 10 DELIBERATIONS.

03:23PM 11 AND OBVIOUSLY THAT INSTRUCTION WASN'T GIVEN, AND I THINK  
03:23PM 12 THE NINTH CIRCUIT AFFIRMED THAT CONVICTION.

03:23PM 13 THIS IS A LITTLE BIT DIFFERENT. WE SIMPLY SPELL OUT, IN  
03:23PM 14 WHAT I HOPE ARE NONCONTROVERSIAL TERMS, WHAT THE LAW  
03:23PM 15 SURROUNDING NEGLIGENCE IS, WHAT -- HOW IT'S DEFINED, AND HOW  
03:23PM 16 RECKLESSNESS IS DEFINED, AND INVITE IT AS A PERMISSIVE  
03:23PM 17 INFERENCE ONLY, QUOTE, "IF YOU FIND" -- AND I'M QUOTING FROM  
03:23PM 18 OUR PROPOSAL AT 1476, YOUR HONOR -- "IF YOU FIND THAT THE  
03:23PM 19 GOVERNMENT NEGLIGENTLY OR RECKLESSLY FAILED TO PRESERVE THE LIS  
03:24PM 20 LABORATORY -- THE THERANOS LIS, THAT THE GOVERNMENT KNEW OR  
03:24PM 21 SHOULD HAVE KNOWN WOULD BE EVIDENCE IN THIS CASE, YOU MAY  
03:24PM 22 INFER, BUT ARE NOT REQUIRED TO INFER, THAT THIS EVIDENCE WAS  
03:24PM 23 UNFAVORABLE TO THE GOVERNMENT."

03:24PM 24 I THINK THAT THAT -- THE CORE OF IT, YOUR HONOR, THUS  
03:24PM 25 TRACKS THE NINTH CIRCUIT MODEL INSTRUCTION.

03:24PM 1 AND THE REFERENCE TO STATE OF MIND CLOSELY TRACKS OTHER  
03:24PM 2 INSTRUCTIONS, AS WELL AS NINTH CIRCUIT CASE LAW FROM SIVILLA  
03:24PM 3 AND OTHERS.

03:24PM 4 I NEXT WANT TO TURN, YOUR HONOR, TO A DIFFERENT ARGUMENT  
03:24PM 5 THAT THE GOVERNMENT HAS RAISED, AND AGAIN, I'M KIND OF  
03:24PM 6 PROCEEDING BLIND HERE WITHOUT KNOWING EXACTLY WHAT MR. LEACH'S  
03:24PM 7 POSITION IS, BUT THERE'S BEEN SOME SUGGESTION THAT THESE  
03:24PM 8 INSTRUCTIONS ARE NOT APPROPRIATE UNLESS THE GOVERNMENT WAS IN  
03:24PM 9 PHYSICAL -- HAD ALREADY TAKEN CUSTODY AND POSSESSION OF THE  
03:24PM 10 INFORMATION, AND I JUST DON'T THINK THAT'S TRUE.

03:24PM 11 IF YOU LOOK AT THE NINTH CIRCUIT'S DECISION IN ROBERTSON,  
03:24PM 12 WHICH THE COURT CITED IN DOCKET 887, AND WHICH IS AT  
03:24PM 13 895 F.3D 1206, IF YOU LOOK AT PAGE 1213, ROBERTSON ARTICULATES  
03:25PM 14 THAT MULTI FACTOR BALANCING TEST TAKEN FROM LOUD HAWK AND IT  
03:25PM 15 NOTES THERE'S NOT ONE FACTOR THAT IS DISPOSITIVE.

03:25PM 16 AND WHEN YOU LOOK AT THE ONE PRONG, THE QUALITY OF THE  
03:25PM 17 GOVERNMENT'S CONDUCT, WHICH THE GOVERNMENT BEARS THE BURDEN OF  
03:25PM 18 PROVING, ONLY ONE OF THE FACTORS IS WHETHER EVIDENCE LOST --  
03:25PM 19 WHETHER THE EVIDENCE WAS LOST OR DESTROYED WHILE IN THE  
03:25PM 20 GOVERNMENT'S CUSTODY.

03:25PM 21 THE OTHERS INCLUDE WHETHER THE GOVERNMENT ACTED IN  
03:25PM 22 DISREGARD OF THE DEFENDANT'S INTERESTS; WHETHER THE GOVERNMENT  
03:25PM 23 WAS NEGLIGENT, WHICH WE CONTEND WAS THE CASE FOR BOTH OF THOSE  
03:25PM 24 LAST TWO; WHETHER THE ACTUAL PROSECUTING ATTORNEYS WERE  
03:25PM 25 INVOLVED, WHICH WE CONTEND IS THE CASE; AND THEN ALSO WHETHER

03:25PM 1 THE DESTRUCTION INVOLVED DELIBERATE ACTS AND AN ABSENCE OF GOOD  
03:25PM 2 FAITH BY THE GOVERNMENT.

03:25PM 3 I THINK GIVEN THAT STANDARD, YOUR HONOR, WE'RE NOT ASKING  
03:25PM 4 THE COURT TO TELL THE JURY WHAT HAPPENED OR TO TELL THE JURY  
03:26PM 5 WHAT IT MEANS.

03:26PM 6 WE'RE ASKING THE COURT TO PROVIDE A LEGAL FRAMEWORK  
03:26PM 7 AGAINST WHICH MR. COOPERSMITH COULD ARGUE -- OBVIOUSLY, AS I  
03:26PM 8 THINK THE COURT KNOWS, EVEN IN THE ABSENCE OF THAT FRAMEWORK  
03:26PM 9 MR. COOPERSMITH COULD STILL MAKE THE ARGUMENT, THOSE DECISIONS  
03:26PM 10 THAT HAVE NOT AWARDED THE INFERENCE HAVE DONE SO IN  
03:26PM 11 CIRCUMSTANCES WHERE THE DEFENDANT WAS ALLOWED TO MAKE THE  
03:26PM 12 ARGUMENT ANYWAY, AND BARRING THE DEFENDANT FROM MAKING THAT  
03:26PM 13 ARGUMENT IS ONE OF THE FACTORS THAT LENDS ITSELF TO REVERSAL IN  
03:26PM 14 THE OTHER DECISIONS THAT WE'VE CITED.

03:26PM 15 THE COURT: WELL, WE'VE HAD CONVERSATION, YOU AND I  
03:26PM 16 AND MR. COOPERSMITH AS WELL, REGARDING -- AND I THINK I ASKED  
03:26PM 17 YOU, YOU HAVE ENOUGH TO ARGUE INSUFFICIENCY OF THE EVIDENCE  
03:26PM 18 NOW, DON'T YOU, BOTH WITH DR. ROSENDORFF AND MS. CHEUNG AND  
03:26PM 19 OTHERS WHO GAVE SOME PERIPHERAL TESTIMONY ABOUT THE LIS, AND I  
03:26PM 20 THINK I SAID -- MADE AN OBSERVATION THAT THE PROOF IS THAT  
03:26PM 21 THERE ARE THREE WITNESSES, THERE'S SOME EVIDENCE THAT MILLIONS  
03:26PM 22 OF TESTS, PERHAPS HUNDREDS OF THOUSANDS OF TESTS WERE MADE, AND  
03:27PM 23 YOU HAVE THAT OPPORTUNITY TO ARGUE THAT, AS YOU JUST SUGGEST,  
03:27PM 24 EVEN WITHOUT AN INSTRUCTION.

03:27PM 25 I MEAN, YOU WOULD RECOGNIZE THAT.

03:27PM 1 MR. BRECHER: I DO RECOGNIZE THAT, YOUR HONOR.

03:27PM 2 I THINK WITH RESPECT, IT'S A SLIGHTLY DIFFERENT ARGUMENT  
03:27PM 3 THAN THE ONE I'M ARTICULATING HERE.

03:27PM 4 YES, THE DEFENSE MAY IN THIS CASE, AND I THINK MAY IN  
03:27PM 5 EVERY CASE, ARGUE THAT THE GOVERNMENT HASN'T MET ITS BURDEN. I  
03:27PM 6 THINK THAT'S KIND OF THE POINT OF THE CLOSING.

03:27PM 7 AND CERTAINLY THERE'S AN EVIDENTIARY PREDICATE FOR  
03:27PM 8 MR. COOPERSMITH TO MAKE SPECIFIC REFERENCE TO THE LIS AND WHAT  
03:27PM 9 WAS CONTAINED IN IT.

03:27PM 10 BUT HERE THE ISSUE IS, CAN WE ALSO MAKE INFERENCES, AND  
03:27PM 11 CAN THE JURY BE GIVEN SOME LEGAL FRAMEWORK IN THE FORM OF AN  
03:27PM 12 INSTRUCTION TO UNDERSTAND THE CONDUCT IN FAILING TO SECURE THAT  
03:27PM 13 LIS INFORMATION?

03:27PM 14 THE COURT: SO THIS -- THANK YOU. THIS GOES TOWARD  
03:27PM 15 PREJUDICE, WHICH IS YOUR BURDEN, IS IT?

03:27PM 16 MR. BRECHER: SOMEWHAT, YOUR HONOR.

03:27PM 17 PREJUDICE IS OUR BURDEN, BUT THE GOVERNMENT'S CONDUCT IS  
03:27PM 18 THE GOVERNMENT'S BURDEN.

03:27PM 19 THE COURT: RIGHT. SO I'M FOCUSSING ON YOU NOW.  
03:27PM 20 WHAT IS THE PREJUDICE?

03:28PM 21 MR. BRECHER: WELL, THE PREJUDICE IS PRECISELY I  
03:28PM 22 THINK WHAT MR. COOPERSMITH ARTICULATED ON FEBRUARY 8TH. IT'S  
03:28PM 23 THE ABSENCE OF COMPREHENSIVE TESTING DATA IN A CASE THAT IS AT  
03:28PM 24 ITS CORE ABOUT THE SYSTEMIC, ALLEGED SYSTEMIC UNRELIABILITY OF  
03:28PM 25 PATIENT TESTS.

03:28PM 1 THE DEFENSE IS LEFT ILL EQUIPPED TO REBUT THE GOVERNMENT'S  
03:28PM 2 CHARGES, WHICH ARE LEFT TO STAND ON THE EXPERIENCES OF A  
03:28PM 3 HANDFUL OF PATIENT WITNESSES AND A FEW DOZEN E-MAILS OVER THE  
03:28PM 4 COURSE OF THREE TO SIX YEARS.

03:28PM 5 SO I THINK THAT THAT'S THE PREJUDICE, YOUR HONOR.

03:28PM 6 AND WE ALSO -- AGAIN, I KEEP FLASHING BACK TO OUR  
03:28PM 7 FEBRUARY 8TH CONVERSATION THAT MR. COOPERSMITH HAD WITH THE  
03:28PM 8 COURT.

03:28PM 9 BUT REMEMBER, AS DR. ROSENDORFF TESTIFIED, THERE ARE A  
03:28PM 10 SERIES OF THINGS, CONCRETE THINGS THAT YOU CAN DO WITH THE LIS.  
03:28PM 11 YOU CAN RUN PATIENT TREND ANALYSIS. IT CONTAINS ALL OF THE  
03:28PM 12 QUALITY CONTROL INFORMATION, AT LEAST ACCORDING TO  
03:28PM 13 DR. ROSENDORFF.

03:28PM 14 I THINK MS. CHEUNG TESTIFIED DIFFERENTLY.

03:28PM 15 AND AS THE COURT WILL RECALL, MUCH OF THE GOVERNMENT'S  
03:29PM 16 CASE ABOUT TESTING RELIABILITY TURNS ON QUALITY CONTROL ISSUES.

03:29PM 17 THE COURT: IS THERE EVIDENCE IN THE CASE THAT WOULD  
03:29PM 18 SUGGEST THAT THE LIS ITSELF, WHATEVER INFORMATION IS ON THE  
03:29PM 19 LIS, WOULD ACTUALLY PROVIDE THAT INFORMATION? OR IS IT  
03:29PM 20 SPECULATIVE AS TO WHAT THAT WOULD PROVIDE EITHER WAY?

03:29PM 21 YOU RECALL IN A COURT'S PREVIOUS ORDER, PERHAPS IN ANOTHER  
03:29PM 22 CASE, THE COURT -- IT MIGHT HAVE BEEN IN DOCKET 798, THE COURT  
03:29PM 23 RECOGNIZED THAT, AT LEAST AS OF THE TIME OF THAT HEARING, THAT  
03:29PM 24 MOTION, IT WAS SPECULATIVE AS TO WHAT THE LIS CONTAINED. IT  
03:29PM 25 WAS EQUALLY PLAUSIBLE THAT IT COULD INCULPATE AS WELL AS

03:29PM 1 EXCULPATE.

03:29PM 2 MR. BRECHER: YES. LET ME TAKE THAT IN ORDER, YOUR  
03:29PM 3 HONOR.

03:29PM 4 FIRST, AS TO WHETHER THERE'S EVIDENCE ABOUT WHAT THE LIS  
03:29PM 5 CONTAINS, THE ANSWER IS YES. BUT I'LL RECOGNIZE THAT SOME OF  
03:29PM 6 THAT EVIDENCE CONFLICTS WITH ONE ANOTHER, BUT THAT'S SORT OF  
03:30PM 7 THE CLASSIC CASE, YOUR HONOR, AND THAT'S AN ISSUE THAT THE  
03:30PM 8 PARTIES CAN ARGUE ABOUT THE SIGNIFICANCE OF THAT.

03:30PM 9 WHAT DR. ROSENDORFF TESTIFIED, AND I THINK THIS IS THE  
03:30PM 10 PORTION THAT THE DEFENSE WOULD EMPHASIZE, MR. LEACH MAY  
03:30PM 11 EMPHASIZE DIFFERENT TESTIMONY, IS THAT THE LIS CONTAINED ALL OF  
03:30PM 12 THE TEST RESULTS, ALL OF THE QUALITY CONTROL INFORMATION,  
03:30PM 13 INFORMATION ABOUT THE TYPE OF DEVICE USED. I BELIEVE THE  
03:30PM 14 PERSON WHO TOOK THE DRAW, CLINICAL NOTES, FOLLOWUPS, REDRAWS.

03:30PM 15 AND HE TESTIFIED FURTHER, YOUR HONOR. HE SAID THAT IF A  
03:30PM 16 CLINICIAN CALLED WITH CONCERNS, HE WOULD FREQUENTLY TURN TO THE  
03:30PM 17 LIS FOR THAT PATIENT TREND ANALYSIS IN ORDER TO FIGURE OUT, YOU  
03:30PM 18 KNOW, WAS THAT TEST VALID.

03:30PM 19 SO THERE IS EVIDENCE TO THAT EFFECT.

03:30PM 20 I THINK WHAT THE COURT -- I THINK THE SECOND PART OF THE  
03:30PM 21 COURT'S QUESTION, IF I UNDERSTAND IT, IS, IS THERE A DISPUTE OR  
03:30PM 22 IS THERE EVIDENCE ABOUT WHETHER IT'S EXCULPATORY OR  
03:30PM 23 INCULPATORY, AND THERE IS SUCH A DISPUTE.

03:30PM 24 THE GOVERNMENT HAS CONTENDED -- WELL, DIFFERENT THINGS.  
03:30PM 25 FOR A WHILE THEY WERE SAYING THIS IS WHERE THE BODIES ARE

03:31PM 1 BURIED AND IT'S CRITICAL INCULPATORY EVIDENCE IN THE CASE.

03:31PM 2 AND THEN AS SOON AS MR. SONNIER'S TESTIMONY SHOWED UP,  
03:31PM 3 THEY CHANGE THEIR TUNE CHANGED DRAMATICALLY AND THEY SAID NOT  
03:31PM 4 AT ALL.

03:31PM 5 BUT THE DEFENSE HAS ALWAYS CONTENDED, AND I THINK THE  
03:31PM 6 FACTS OF THIS CASE AND THE ANECDOTAL PRESENTATION OF THE  
03:31PM 7 GOVERNMENT'S CASE UNDERSCORE, THAT THIS EVIDENCE WOULD BE  
03:31PM 8 EXCULPATORY.

03:31PM 9 YOU HEARD FROM, AND I DON'T WANT TO GET INTO CLOSING, YOUR  
03:31PM 10 HONOR, BUT YOU HEARD FROM DR. BURNES, WHO SAW MANY, MANY  
03:31PM 11 PERSONS WHO GOT THEIR BLOOD TESTS AT THERANOS. YOU SAW ONE  
03:31PM 12 PATIENT WITH A PROBLEM.

03:31PM 13 YOU HEARD FROM DR. ZACHMAN. MANY PATIENTS WITHOUT  
03:31PM 14 PROBLEMS COULD ONLY FIND ONE PATIENT WITH A PROBLEM.

03:31PM 15 YOU HEARD FROM DR. WOOTEN. MANY PATIENTS FROM THERANOS,  
03:31PM 16 NONE WITH A PROBLEM.

03:31PM 17 SO I THINK THAT IN COMBINATION WITH WHAT WE KNOW THE LIS  
03:31PM 18 COULD DO, MAKES IT NONSPECULATIVE.

03:32PM 19 THE COURT: PARDON ME FOR INTERRUPTING YOU. THAT'S  
03:32PM 20 THE QUESTION I HAVE, ISN'T THERE A QUESTION AS TO WHAT THE LIS  
03:32PM 21 COULD DO? IT HAS THIS INFORMATION, BUT DOESN'T THERE HAVE TO  
03:32PM 22 BE SOME COMPARATOR?

03:32PM 23 MY SENSE IS THAT THE LIS -- AND PLEASE HELP ME WITH  
03:32PM 24 THIS -- THE LIS HAS THE RESULTS OF THE TESTS.

03:32PM 25 AND I'VE ALWAYS WONDERED, WELL, OKAY, DON'T YOU HAVE TO

03:32PM 1 COMPARE THAT, AS SOME OF THE EVIDENCE SHOWED -- ONE OF THE  
03:32PM 2 WITNESSES WHO WAS SELF-REGULATING, HE KNEW HIS BODY, HE KNOWS  
03:32PM 3 THE WAY HE FEELS, AND HE TESTIFIED ABOUT THE TEST HE GOT DID  
03:32PM 4 NOT COMPORT WITH HIS BODY SYMPTOMS AND THOSE TYPES OF THINGS.  
03:32PM 5 THAT WAS A COMPARATOR.

03:32PM 6 DOESN'T THERE HAVE TO BE A SIMILAR TYPE OF COMPARATOR WITH  
03:32PM 7 THE LIS INFORMATION?

03:32PM 8 MR. BRECHER: I SEE.

03:32PM 9 I THINK THERE WOULD BE TWO RESPONSES FROM THAT. THE FIRST  
03:32PM 10 IS DRAWN FROM DR. ROSENDORFF'S TESTIMONY WHICH ESTABLISHES, TO  
03:32PM 11 OUR MIND -- AND THE GOVERNMENT CAN DRAW FROM DIFFERENT  
03:32PM 12 TESTIMONY TO ARGUE SOMETHING DIFFERENT -- THAT IN RUNNING THAT  
03:33PM 13 PATIENT TREND ANALYSIS, IT'S NOT JUST LOOKING AT ONE TEST IN  
03:33PM 14 TIME, BUT LOOKING AT THE WHOLE SEQUENCE OF TESTS, BOTH FOR ONE  
03:33PM 15 PATIENT AND THE CROSS PATIENTS, WE CAN DRAW CONCLUSIONS ABOUT  
03:33PM 16 THE ACCURACY AND RELIABILITY OF THAT TESTING.

03:33PM 17 THE COURT: JUST BASED ON LOOKING AT ALL OF THE  
03:33PM 18 RESULTS, AND WHAT WILL THAT -- IS THERE EVIDENCE OF THAT?

03:33PM 19 MR. BRECHER: I THINK THAT WAS DR. ROSENDORFF'S  
03:33PM 20 TESTIMONY. I BELIEVE WE CITED IT BOTH IN OUR MOTION TO COMPEL  
03:33PM 21 SOME OF THESE LIS DOCUMENTS AS BRADY, AND WE CITED IT IN OUR  
03:33PM 22 OPPOSITION TO THE GOVERNMENT'S MOTION.

03:33PM 23 SO I DON'T HAVE THE CITATION OFFHAND, BUT PERHAPS I CAN --  
03:33PM 24 IF THE COURT NEEDS IT, I CAN TURN TO ONE OF MY COLLEAGUES.

03:33PM 25 THE COURT: SO THE TESTIMONY OF DR. ROSENDORFF IS,

03:33PM 1 OH, YEAH, WE COULD HAVE CHECKED WITH PATIENT A AND JUST LOOKED  
03:33PM 2 AT ALL OF HER TEST RESULTS TO SEE IF THEY'RE CONSISTENT OR IF  
03:33PM 3 THERE'S A SKEW; IS THAT IT?

03:33PM 4 MR. BRECHER: DR. ROSENDORFF'S TESTIMONY WAS THAT HE  
03:33PM 5 COULD RUN PATIENT TREND ANALYSES AND WOULD DO SO IN ORDER TO  
03:33PM 6 DETERMINE WHETHER A TEST WAS VALID. HE DID TESTIFY TO THAT  
03:33PM 7 EFFECT, YOUR HONOR.

03:34PM 8 BUT THE SECOND PIECE THAT I WOULD FOCUS ON, YOUR HONOR,  
03:34PM 9 IS, IS THERE SOME DEGREE OF SPECULATION INVOLVED IN ANY MISSING  
03:34PM 10 EVIDENCE? I SUPPOSE THAT'S INHERENTLY TRUE AND SORT OF  
03:34PM 11 LOGICALLY TRUE.

03:34PM 12 BUT IF THE STANDARD WERE THAT THE DEFENSE BORE THE BURDEN  
03:34PM 13 OF ESTABLISHING THAT THIS EVIDENCE WOULD ABSOLUTELY BE  
03:34PM 14 EXCULPATORY AND IT WOULD BE THE KEY TO THE CASE AND IT'S A SURE  
03:34PM 15 FIRE, SLAM DUNK ACQUITTAL, THEN THERE NEVER WOULD BE A MISSING  
03:34PM 16 EVIDENCE INSTRUCTION.

03:34PM 17 IT'S PRECISELY THE PREJUDICE THAT THE NINTH CIRCUIT  
03:34PM 18 ARTICULATES, AND I THINK LOGIC DEMANDS, THAT IT IS OUR LACK OF  
03:34PM 19 ACCESS TO THIS INFORMATION THAT HURTS US.

03:34PM 20 WHEN WE'RE DEALING WITH A CASE WHERE WE HEAR FROM THREE  
03:34PM 21 PATIENT WITNESSES, AND WE SEE A FEW DOZEN E-MAILS, AND WE SEE A  
03:34PM 22 REGULATORY REPORT ABOUT LABORATORY ERROR, 85 PERCENT OF IT BY  
03:34PM 23 MY COUNT HAVING NOTHING TO DO WITH THERANOS'S PROPRIETARY  
03:34PM 24 TECHNOLOGY, WHAT SORT OF CONCLUSIONS CAN WE DRAW?

03:35PM 25 WHAT WE REALLY NEED IS THAT CENTRAL REPOSITORY OF TESTING

03:35PM 1 DATA AND THAT'S ONE.

03:35PM 2 THE SECOND ONE IS WHAT I WAS TALKING TO YOU ABOUT, THE  
03:35PM 3 GOVERNMENT'S MOTION TO EXCLUDE MR. SONNIER. AND THAT IS, IT  
03:35PM 4 CAN'T BE THE CASE THAT THE LAW REQUIRES EXCULPATORY EVIDENCE TO  
03:35PM 5 BE SOMETHING THAT YOU LOOK AT AND YOU DON'T NEED ANYTHING ELSE  
03:35PM 6 AND THAT JUST GIVES YOU THE ANSWER.

03:35PM 7 OTHERWISE THAT REALLY IS NO DIFFERENT THAN A FINGERPRINT,  
03:35PM 8 YOUR HONOR. STANDING ALONE, A FINGERPRINT TELLS YOU NOTHING.  
03:35PM 9 IT'S ONLY IN COMBINATION WITH OTHER EVIDENCE THAT YOU KNOW  
03:35PM 10 WHETHER THIS IS INCULPATORY OR EXCULPATORY.

03:35PM 11 THE COURT: OKAY.

03:35PM 12 MR. LEACH: THE PROPOSED INSTRUCTION IS NOT  
03:35PM 13 SUPPORTED BY THE LAW AND IT'S NOT SUPPORTED BY THE FACTS.

03:35PM 14 I'M SURE THE COURT IS FAMILIAR WITH THE CASES CITED IN THE  
03:36PM 15 DEFENDANT'S PROPOSED INSTRUCTIONS. NOT ONE OF THEM INVOLVE A  
03:36PM 16 THIRD PARTY, NOT THE GOVERNMENT, WHO DESTROYS OR FAILS TO  
03:36PM 17 PRESERVE EVIDENCE. THAT'S THE CRITICAL DISTINCTION IN THIS  
03:36PM 18 CASE.

03:36PM 19 THE TIME THAT MR. BRECHER HAS BEEN TALKING ABOUT, HE  
03:36PM 20 CONTINUES NOT TO CITE A SINGLE CASE WHERE A THIRD PARTY, NOT  
03:36PM 21 THE GOVERNMENT, DESTROYS OR FAILS TO PRESERVE EVIDENCE.

03:36PM 22 AND I'M QUITE CONFIDENT THAT MY FRIENDS ON THE OTHER SIDE  
03:36PM 23 HAVE SCoured THE EARTH TO FIND A CASE WHERE THIS REMEDIAL  
03:36PM 24 INSTRUCTION -- THIS IS A REMEDIAL INSTRUCTION TO PUNISH A PARTY  
03:36PM 25 FOR NOT DOING SOMETHING WHERE IT'S NOT THE PARTY WHO DID

03:36PM 1 ANYTHING HERE.

03:36PM 2 TO BE CRYSTAL CLEAR, THE GOVERNMENT DID NOT DESTROY  
03:36PM 3 EVIDENCE, AND THE GOVERNMENT DID NOT FAIL TO PRESERVE EVIDENCE.

03:36PM 4 THERANOS AND THE ASSIGNEE -- I'M NOT EVEN SURE WHO BASED  
03:36PM 5 ON THE TESTIMONY THAT I HEARD TODAY -- ARE THE ONES WHO ELECTED  
03:37PM 6 TO DISASSEMBLE THE LIS DATABASE AND DO SOMETHING, AND I'M NOT  
03:37PM 7 SURE WHAT THE STATUS OF THE RECORD IS AFTER MR. SONNIER'S  
03:37PM 8 TESTIMONY TODAY WITH THOSE DRIVES.

03:37PM 9 THERE SIMPLY IS ZERO EVIDENCE THAT THE GOVERNMENT  
03:37PM 10 DESTROYED OR FAILED TO PRESERVE EVIDENCE IN THIS CASE, AND THAT  
03:37PM 11 SHOULD BE A FULL STOP ON THIS INSTRUCTION.

03:37PM 12 I KNOW THE COURT IS FAMILIAR WITH THE CASES AND THE LAW  
03:37PM 13 THAT THE DEFENDANT CITES IN SUPPORT OF THIS INSTRUCTION. I  
03:37PM 14 THINK IT'S IMPORTANT TO GO THROUGH THEM JUST TO SEE HOW  
03:37PM 15 DIFFERENT THE FACTS ARE FROM THOSE CASES.

03:37PM 16 THE FIRST THING THEY CITE IS THE MODEL INSTRUCTION, WHICH  
03:37PM 17 SAYS, "IF YOU FIND THAT THE GOVERNMENT INTENTIONALLY DESTROYED,  
03:37PM 18 FAILED TO PRESERVE," AND THEN INSERT THE EVIDENCE, "THAT THE  
03:37PM 19 GOVERNMENT KNEW OR SHOULD HAVE KNOWN WOULD BE EVIDENCE IN THIS  
03:37PM 20 CASE, YOU MAY INFER, BUT ARE NOT REQUIRED TO INFER, THAT THIS  
03:38PM 21 EVIDENCE WAS UNFAVORABLE TO THE GOVERNMENT."

03:38PM 22 FULL STOP ON THE WORD "INTENTIONALLY."

03:38PM 23 THERE IS NO EVIDENCE THAT THE GOVERNMENT DESTROYED OR  
03:38PM 24 FAILED TO PRESERVE EVIDENCE IN THIS CASE, AND THERE'S CERTAINLY  
03:38PM 25 NO EVIDENCE THAT THE GOVERNMENT DID IT INTENTIONALLY.

03:38PM 1 THE NEXT CASE THAT THEY CITE IS LOUD HAWK, WHICH THE COURT  
03:38PM 2 IS VERY FAMILIAR WITH. LOUD HAWK IS A CASE WHERE STATE  
03:38PM 3 AUTHORITIES DETONATED THE DYNAMITE THAT HAD BEEN SEIZED. IT  
03:38PM 4 WAS THE STATE ITSELF, WHICH GETS ATTRIBUTED TO THE FEDERAL  
03:38PM 5 GOVERNMENT, THAT ELECTED TO DETONATE VERY DANGEROUS TNT.

03:38PM 6 THAT IS NOT THIS CASE. THE GOVERNMENT DIDN'T DESTROY AND  
03:38PM 7 IT DIDN'T FAIL TO PRESERVE ANYTHING.

03:38PM 8 THE NEXT CASE IS ROBERTSON, WHICH WE HEARD AGAIN TODAY  
03:38PM 9 FROM MR. BRECHER, AND FRANKLY, I'M SURPRISED THAT THEY'RE  
03:38PM 10 RAISING THE ROBERTSON CASE.

03:38PM 11 THIS INVOLVED A MAIL THEFT AND THERE WAS A PARKING LOT AT  
03:39PM 12 THE U.S. POSTAL FACILITY AND THE DEFENDANT WAS A MAIL EMPLOYEE  
03:39PM 13 THERE AND HER ALLEGATION WAS THAT I TOLD THE INSPECTOR OR THE  
03:39PM 14 INSPECTOR KNEW THERE WAS A VIDEO CAMERA RECORDING THE PARKING  
03:39PM 15 LOT, AND HE FAILED TO GO AND GET THAT.

03:39PM 16 WELL, THAT WAS THE GOVERNMENT THAT FAILED TO PRESERVE ITS  
03:39PM 17 OWN RECORDING OF THE PARKING LOT THERE.

03:39PM 18 IT'S NOT THIS CASE. THE GOVERNMENT OBTAINED A BACKUP COPY  
03:39PM 19 OF THE HARD DRIVE FROM THERANOS. IT PRODUCED THAT BACKUP COPY  
03:39PM 20 TO THE DEFENSE, AND THE ASSIGNEE, OR THERANOS, FOR REASONS THAT  
03:39PM 21 WERE KNOWN AT THE TIME ONLY TO THERANOS AND THE ASSIGNEE,  
03:39PM 22 ELECTED TO DISASSEMBLE THE ORIGINAL EQUIPMENT.

03:39PM 23 THERE'S NO EVIDENCE THAT THE GOVERNMENT SHOULD HAVE KNOWN  
03:39PM 24 IT WAS HAPPENING OR ACTUALLY KNEW THAT THAT WAS HAPPENING. IT  
03:39PM 25 WAS THERANOS AND THE ASSIGNEE, NOT THE GOVERNMENT, THAT ELECTED

03:39PM 1 TO DISASSEMBLE THE ORIGINAL EQUIPMENT.

03:40PM 2 AND THERE'S ZERO REASON FOR THE GOVERNMENT TO THINK THAT  
03:40PM 3 WILMER HALE, A PRESTIGIOUS LAW FIRM, DORSEY WHITNEY, ANOTHER  
03:40PM 4 PRESTIGIOUS LAW FIRM, WOULD NOT TAKE STEPS TO COMPLY WITH THE  
03:40PM 5 SUBPOENAS THAT THEY HAD RECEIVED TO PRESERVE EVIDENCE.

03:40PM 6 WE DIDN'T HEAR A SINGLE THING FROM MR. SONNIER TODAY  
03:40PM 7 SUGGESTING THAT THE GOVERNMENT SOMEHOW SHOULD HAVE KNOWN THOSE  
03:40PM 8 PARTIES WOULD NOT HAVE TAKEN APPROPRIATE STEPS TO PRESERVE THE  
03:40PM 9 EQUIPMENT.

03:40PM 10 SO ROBERTSON DOESN'T HELP THEM AT ALL BECAUSE IT'S THE  
03:40PM 11 GOVERNMENT THAT DIDN'T PRESERVE ITS OWN VIDEO IN THAT CASE.

03:40PM 12 AND THERE ARE OTHER FACTORS I CAN TALK ABOUT IN THE  
03:40PM 13 ROBERTSON CASE, BUT THAT CASE DOESN'T HOLD WATER.

03:40PM 14 THE OTHER CASE THAT THEY CITE, AND THE COURT HAS CITED  
03:40PM 15 REPEATEDLY IN ITS ORDERS, IS THE SIVILLA CASE. THAT'S A CASE  
03:40PM 16 WHERE THE NINTH CIRCUIT REVERSED THE FAILURE TO GIVE A REMEDIAL  
03:40PM 17 INSTRUCTION. IT SAYS THE GOVERNMENT WAS NEGLIGENT IN THAT  
03:41PM 18 CASE.

03:41PM 19 BUT CONSIDER THE FACTS OF THAT CASE. THIS IS WHERE A CAR  
03:41PM 20 WAS DRIVEN OVER THE BORDER.

03:41PM 21 THE DEFENSE IMMEDIATELY SENT THE GOVERNMENT A PRESERVATION  
03:41PM 22 LETTER SAYING PRESERVE EVIDENCE IN THIS CASE.

03:41PM 23 THEY FILED A MOTION TO PRESERVE EVIDENCE IN THIS CASE.

03:41PM 24 THE COURT ORDERED THE GOVERNMENT TO PRESERVE THE CAR.

03:41PM 25 AND THEN WHAT DID THE GOVERNMENT DO? IT SOLD THE CAR FOR

03:41PM 1 FORFEITURE.

03:41PM 2 AND THERE WAS NO BAD FAITH IN THAT CASE, OR AT LEAST NO  
03:41PM 3 FINDING OF BAD FAITH IN THAT CASES, BUT THE NINTH CIRCUIT SAID  
03:41PM 4 A REMEDIAL INSTRUCTION WAS APPROPRIATE THERE BECAUSE THE AGENTS  
03:41PM 5 AND THE PROSECUTORS ESSENTIALLY WERE IGNORING A COURT ORDER.

03:41PM 6 AND IT'S IMPORTANT BECAUSE THE EVIDENCE IN THAT CASE THAT  
03:41PM 7 WAS NOT PRESERVED OR THAT WAS DESTROYED WAS ACTUALLY IN THE  
03:41PM 8 POSSESSION, CUSTODY, OR CONTROL OF THE GOVERNMENT.

03:41PM 9 THAT SIMPLY CANNOT BE SAID HERE, YOUR HONOR.

03:41PM 10 THEY'RE TRYING TO FIT THIS SQUARE PEG INTO A ROUND HOLE BY  
03:42PM 11 SAYING BECAUSE THE GOVERNMENT DIDN'T GO OUT AND GET A SEARCH  
03:42PM 12 WARRANT TO OBTAIN THESE SERVERS OR DIDN'T EXERCISE ENOUGH  
03:42PM 13 PERSUASIVE CONTROL OVER THE ASSIGNEE OVER ITS OWN EQUIPMENT,  
03:42PM 14 THEN IT IS SOMEHOW NEGLIGENT OR RECKLESS.

03:42PM 15 THERE IS NO CASE THAT THEY HAVE CITED TO SUPPORT THAT  
03:42PM 16 PROPOSITION, AND THIS COURT WOULD, I THINK, BE THE FIRST COURT  
03:42PM 17 TO IMPOSE A REMEDIAL SANCTION, WHICH IS WHAT THEY'RE ASKING  
03:42PM 18 FOR, FOR THE GOVERNMENT NOT DOING ENOUGH AND THE THIRD PARTY,  
03:42PM 19 UNBEKNOWNST TO THE GOVERNMENT, DESTROYING EVIDENCE.

03:42PM 20 THE LAST CASE THAT THEY CITE IS AN UNPUBLISHED DECISION,  
03:42PM 21 UNITED STATES VERSUS BURNES. THERE'S NO DISCUSSION IN THE  
03:42PM 22 BURNES CASE ABOUT WHAT THE MISSING EVIDENCE IN THAT CASE WAS,  
03:42PM 23 WHAT THE PARTICULAR ISSUES WERE.

03:43PM 24 IT'S AN UNPUBLISHED DECISION, AND ALL IT DOES IS STAND FOR  
03:43PM 25 THE PROPOSITION THAT BAD FAITH IS NOT REQUIRED AND THE DISTRICT

03:43PM 1 COURT ERRED THERE THINKING THAT BAD FAITH WAS REQUIRED.

03:43PM 2 THE COURT ASKED A QUESTION WHAT AND SO THERE'S NO CASE  
03:43PM 3 THAT HAS APPLIED THIS LOUD HAWK BALANCING TO WHERE A THIRD  
03:43PM 4 PARTY AND NOT THE GOVERNMENT HAS DESTROYED OR FAILED TO  
03:43PM 5 PRESERVE THE EVIDENCE.

03:43PM 6 SO I THINK ON THAT BASIS ALONE IT'S A FULL STOP AND THE  
03:43PM 7 COURT SHOULD DECLINE TO GIVE THE INSTRUCTION HERE.

03:43PM 8 YOU ASKED A QUESTION ABOUT WHAT THE RELATIVE BURDENS ARE  
03:43PM 9 ON SUPPORTING THE GOVERNMENT'S CONDUCT. THAT IS THE  
03:43PM 10 GOVERNMENT'S BURDEN.

03:43PM 11 ON THE PREJUDICE TO THE DEFENDANT, IT'S NOT MAYBE THE  
03:43PM 12 DEFENDANT. IT'S FULL STOP THE DEFENDANT.

03:43PM 13 AND I THINK IT'S CRITICAL THERE BECAUSE THE COURT HAS  
03:43PM 14 TWICE, NOT ONCE, TWICE IN ITS ORDER DENYING THE MOTION TO  
03:43PM 15 SUPPRESS BY MS. HOLMES, AND ALSO THE ORDER DENYING THE MOTION  
03:44PM 16 TO SUPPRESS BY MR. BALWANI, FOUND THAT THE EXCULPATORY VALUE OF  
03:44PM 17 THE LIS DATABASE WAS AND REMAINS SPECULATIVE. THAT'S AT  
03:44PM 18 ECF 1326, PAGE 32.

03:44PM 19 SO ON THE PRONG WHERE THE DEFENDANT HAS THE BURDEN, YOU  
03:44PM 20 HAVE ALREADY FOUND THAT IT'S SPECULATIVE TO SAY THE LIS  
03:44PM 21 EVIDENCE IS EXCULPATORY.

03:44PM 22 THE COURT IS ABSOLUTELY RIGHT -- AND THIS IS A POINT THAT  
03:44PM 23 THE ROBERTSON COURT, THE NINTH CIRCUIT MAKES ON PAGE 1214 --  
03:44PM 24 THERE'S ALSO NO PREJUDICE BECAUSE EVERY ARGUMENT THAT  
03:44PM 25 MR. BRECHER JUST MADE TO YOU ABOUT WHY THIS INSTRUCTION IS

03:44PM 1 APPROPRIATE ARE ARGUMENTS THAT MR. COOPERSMITH CAN MAKE IN HIS  
03:44PM 2 CLOSING ARGUMENT.

03:44PM 3 HE CAN SAY THE GOVERNMENT WAS TOLD IN OCTOBER OF 2018 THAT  
03:44PM 4 THE PARTS COULD BE PUT BACK TOGETHER IF YOU JUST GO OUT AND GET  
03:44PM 5 THE PARTS. HE CAN ARGUE THAT THE GOVERNMENT SHOULD HAVE DONE  
03:44PM 6 THAT.

03:44PM 7 HE CAN ARGUE THAT, YOU KNOW, THE THERANOS EMPLOYEES ON THE  
03:45PM 8 GROUND -- I'M NOT SURE HE CAN ARGUE THIS BECAUSE IT'S NOT IN  
03:45PM 9 EVIDENCE OTHER THAN THE OPINION BASIS.

03:45PM 10 BUT, YOU KNOW, HE CAN ARGUE THAT THE THERANOS EMPLOYEES  
03:45PM 11 WERE WRONG AND MR. SONNIER WAS RIGHT.

03:45PM 12 HE CAN MAKE ALL OF THESE ARGUMENTS, THE GOVERNMENT HAS NOT  
03:45PM 13 MET ITS BURDEN, YOU NEED LIS TO CONVICT.

03:45PM 14 WHAT THEY WANT IS A REMEDIAL INSTRUCTION THAT SAYS NOT  
03:45PM 15 JUST USE THAT IN EVALUATING WHETHER THE GOVERNMENT HAS MET ITS  
03:45PM 16 BURDEN OR NOT, BUT YOU'RE ENTITLED TO INFER IT WAS EXCULPATORY.

03:45PM 17 THAT'S A STEP TOO FAR. THERE'S NO BASIS FOR SUCH A  
03:45PM 18 REMEDIAL SANCTION LIKE THAT.

03:45PM 19 EVERY SINGLE CASE THAT THEY CITE INVOLVES THE GOVERNMENT  
03:45PM 20 DESTROYING OR FAILING TO PRESERVE SOMETHING THAT IS IN ITS  
03:45PM 21 CUSTODY, POSSESSION, OR CONTROL. THEY HAVE NOT CITED A SINGLE  
03:45PM 22 CASE TO SUPPORT THIS INSTRUCTION.

03:45PM 23 AND IF YOU LOOK JUST AT THE WORDS IN THE FIRST LINE OF THE  
03:45PM 24 INSTRUCTION, "IF YOU FIND THAT THE GOVERNMENT NEGLIGENTLY OR  
03:46PM 25 RECKLESSLY FAILED TO PRESERVE THE LIS," THERE'S NO EVIDENCE FOR

03:46PM 1 VIRTUALLY ALL OF THE WORDS IN THAT FIRST SENTENCE.

03:46PM 2 WITH RESPECT TO NEGLIGENCE, THERE'S NO EVIDENCE ABOUT WHAT  
03:46PM 3 STANDARD OF CARE A LAW ENFORCEMENT OFFICER IN A COMPLEX  
03:46PM 4 CRIMINAL INVESTIGATION NEEDS TO EMPLOY IN MAKING THE JUDGMENT  
03:46PM 5 WHETHER OR NOT TO TAKE PHYSICAL POSSESSION OF A COMPLICATED  
03:46PM 6 DATABASE POST INDICTMENT WHERE YOU MIGHT HAVE TO, YOU KNOW, WHO  
03:46PM 7 KNOWS WHAT TO TRY TO SET THAT UP.

03:46PM 8 THERE'S NO CASE THAT SAYS -- THAT GIVES THE JURY ANY  
03:46PM 9 SUPPORT FOR A FINDING THAT IT'S NEGLIGENT TO CHOOSE ONE OF FOUR  
03:46PM 10 OPTIONS OR TWO OF FOUR OPTIONS IN A PARTICULAR E-MAIL.

03:46PM 11 THERE'S NO EVIDENCE TO SUPPORT A FINDING OF RECKLESSNESS.

03:46PM 12 WHAT IS THE STANDARD OF CARE?

03:46PM 13 MR. SONNIER CANDIDLY ADMITTED WHEN HE WAS TESTIFYING THAT  
03:47PM 14 HE HAD NEVER BEEN INVOLVED IN A CRIMINAL INVESTIGATION BEFORE.  
03:47PM 15 I DON'T THINK HE KNOWS WHAT A 302 IS. I DON'T THINK HE'S EVER  
03:47PM 16 RELIED ON ONE BEFORE.

03:47PM 17 BUT HE CERTAINLY HAS NO BASIS TO SAY THE GOVERNMENT WAS  
03:47PM 18 NEGLIGENT OR RECKLESS, AND THERE'S REALLY -- WITHOUT THAT  
03:47PM 19 EVIDENCE, WHICH THE DEFENDANT ELECTED NOT TO PUT ON, THERE  
03:47PM 20 SIMPLY IS NO BASIS FOR THIS JURY TO DRAW A COMPARISON BETWEEN  
03:47PM 21 WHAT THIS PROSECUTOR OR WHAT THIS AGENT WOULD DO IS NOT THE  
03:47PM 22 REASONABLE THING TO DO IN THE CONTEXT OF AN INVESTIGATION LIKE  
03:47PM 23 THIS.

03:47PM 24 THE INSTRUCTION GOES ON TO SAY, "FAILED TO PRESERVE THE  
03:47PM 25 THERANOS LIS."

03:47PM 1 THE GOVERNMENT DID NOT FAIL TO PRESERVE THE LIS. THE  
03:47PM 2 GOVERNMENT SUBPOENAED THE LIS. THE GOVERNMENT RECEIVED A  
03:47PM 3 BACKUP COPY THAT NOBODY HAS BEEN ABLE TO ACCESS.

03:47PM 4 BUT IT WAS THE ASSIGNEE, IF ANYBODY, AT THERANOS THAT  
03:48PM 5 FAILED TO PRESERVE ANYTHING.

03:48PM 6 AND THE OTHER THING THAT IS CRITICAL ABOUT THIS, YOUR  
03:48PM 7 HONOR, IS BASED ON THE TRIAL RECORD RIGHT NOW, I DON'T THINK  
03:48PM 8 THERE'S A BASIS FOR THIS JURY TO CONCLUDE THAT THE LIS HAS  
03:48PM 9 FAILED TO BE PRESERVED.

03:48PM 10 WE ASKED MR. SONNIER A NUMBER OF TIMES, WHERE ARE THE HARD  
03:48PM 11 DRIVES? WHERE ARE THE SERVERS? HE THINKS THEY'RE SITTING IN  
03:48PM 12 IRON MOUNTAIN.

03:48PM 13 AND SO I DON'T THINK THERE'S A BASIS FOR THIS JURY TO  
03:48PM 14 CONCLUDE THAT THERE'S ACTUALLY MISSING EVIDENCE.

03:48PM 15 HAS THE GOVERNMENT PRESENTED THE LIS DATABASE TO THEM?  
03:48PM 16 NO. AND THEY'RE TOTALLY FREE TO ARGUE THAT.

03:48PM 17 BUT ON THIS RECORD, I DON'T THINK THERE'S A BASIS FOR THIS  
03:48PM 18 JURY TO CONCLUDE THAT THERE ACTUALLY IS EVIDENCE THAT HAS BEEN  
03:48PM 19 LOST OR DESTROYED.

03:48PM 20 MR. SONNIER DOESN'T HAVE FIRST-HAND KNOWLEDGE OF THIS. HE  
03:48PM 21 SAYS IT'S EQUIVOCAL FROM THE MATERIALS THAT HE'S REVIEWED.

03:48PM 22 AND I THINK IT'S TERRIBLY UNFAIR TO BOTH PARTIES TO ASK  
03:48PM 23 THIS JURY TO COME TO A CONCLUSION ABOUT WHETHER OR NOT EVIDENCE  
03:49PM 24 HAS ACTUALLY BEEN LOST OR PRESERVED.

03:49PM 25 I WANT TO GO THROUGH SOME OF THE LOUD HAWK FACTORS BECAUSE

03:49PM 1 I THINK THE DEFENSE ON SOME LEVEL WANTS TO GLOSS OVER THEM AND  
03:49PM 2 FIT THIS SQUARE PEG INTO A ROUND HOLE.

03:49PM 3 IN ASSESSING THE GOVERNMENT'S CONDUCT, THE FIRST THING --  
03:49PM 4 AND I WOULD SUBMIT THE PRIMARY THING -- THAT THE COURT NEEDS TO  
03:49PM 5 CONSIDER IS, WAS THE EVIDENCE LOST OR DESTROYED WHILE IN THE  
03:49PM 6 GOVERNMENT'S CUSTODY?

03:49PM 7 THERE IS ZERO DISPUTE ABOUT THAT. NONE.

03:49PM 8 THE GOVERNMENT PRODUCED THE BACKUP COPY THAT IT ACTUALLY  
03:49PM 9 RECEIVED TO THE DEFENDANT.

03:49PM 10 THERE IS SIMPLY NO EVIDENCE IN THIS CASE OR IN THE  
03:49PM 11 SUPPRESSION MOTION ARGUMENT THAT THE GOVERNMENT LOST OR  
03:49PM 12 DESTROYED ANYTHING.

03:49PM 13 THE NEXT QUESTION IS WHETHER THE GOVERNMENT ACTED IN  
03:49PM 14 DISREGARD OF THE DEFENDANT'S INTEREST?

03:49PM 15 THERE'S NO EVIDENCE THAT THE GOVERNMENT DID THAT. THERE'S  
03:49PM 16 NO EVIDENCE THAT MR. BOSTIC OR MR. SCHENK OR I SAT AROUND AND  
03:50PM 17 THOUGHT, WELL, LET'S NOT GO GET THAT LIS DATABASE BECAUSE WE'RE  
03:50PM 18 REALLY WORRIED WHAT IS IN THERE.

03:50PM 19 NO. THE EVIDENCE THAT CAME IN TODAY SHOWED THAT  
03:50PM 20 MR. BOSTIC WAS ENGAGING WITH THE ASSIGNEE TO TRY TO GET ACCESS  
03:50PM 21 TO THE LIS DATABASE AND WAS TOLD INDIRECTLY THROUGH THE LAWYER,  
03:50PM 22 THE PEOPLE WHO ACTUALLY WORK WITH THIS THING, THAT IT'S A  
03:50PM 23 HERCULEAN TASK TO GET IN THERE. IT'S JUST NOT GOING TO HAPPEN.

03:50PM 24 THERE'S JUST SIMPLY NO EVIDENCE THAT THE GOVERNMENT ACTED  
03:50PM 25 IN DISREGARD OF MR. BALWANI'S INTEREST.

THE NEXT QUESTION IS WHETHER THE GOVERNMENT WAS NEGLIGENT?

THE ANSWER TO THAT QUESTION IS NO. THE GOVERNMENT DIDN'T FAIL TO PRESERVE ANYTHING. IT PRODUCED THE BACKUP COPY TO THE DEFENDANT.

THEY -- THE THRUST OF WHAT THEY'RE SAYING, YOUR HONOR, IS THAT IN OCTOBER OF 2018, THE GOVERNMENT SHOULD HAVE GONE AND GOT A SEARCH WARRANT, MAGISTRATE FINDS PROBABLE CAUSE, AND IT SHOULD HAVE TAKEN POSSESSION OF ALL OF THESE PHYSICAL SERVERS, AND IT DIDN'T DO IT FAST ENOUGH BECAUSE IT SHOULD HAVE KNOWN THAT DORSEY WOULDN'T KEEP THE HARD DRIVES OR WOULDN'T KEEP THE SERVERS, EVEN THOUGH THEY HAD A PRESERVATION LETTER, EVEN THOUGH THEY HAD SUBPOENAS REQUIRING THEM TO MAINTAIN EVERYTHING.

THERE IS SIMPLY NOTHING TO SUGGEST THAT THE GOVERNMENT WAS ON NOTICE OR SHOULD HAVE BEEN ON NOTICE THAT THESE SERVERS WERE GOING TO DISAPPEAR IN A WAY WHERE THEY COULDN'T BE PUT BACK TOGETHER AGAIN. SO THERE'S NO EVIDENCE OF GOVERNMENT NEGLIGENCE.

WHETHER THE PROSECUTING ATTORNEYS WERE INVOLVED.

MY FRIENDS ON THE OTHER SIDE LIKE TO POINT TO THE E-MAIL THAT CAME INTO EVIDENCE TODAY FOR NOTICE TO SUGGEST THAT THE PROSECUTORS IN THIS CASE WERE INVOLVED.

BUT I THINK THE PROPER READING OF THAT FACTOR, YOUR HONOR, IS WHETHER THE PROSECUTORS WERE INVOLVED IN DESTROYING OR FAILING TO PRESERVE EVIDENCE IN ITS CUSTODY.

03:51PM 1 LOOK AT THE ROBERTSON CASE. IN THAT CASE, YOU KNOW, IT  
03:52PM 2 WAS GOVERNMENT EVIDENCE.

03:52PM 3 AND I THINK THE SIVILLA CASE REALLY MAKES THIS CLEAR. THE  
03:52PM 4 PROSECUTOR HAD BEEN ORDERED TO PRESERVE THIS, AND THE  
03:52PM 5 PROSECUTOR DIDN'T ACT QUICKLY ENOUGH TO GET WORD TO THE  
03:52PM 6 FORFEITURE UNIT TO HALT THE FORFEITURE THERE.

03:52PM 7 AND SO IT WAS RIGHT IN SIVILLA TO SAY THAT THE PROSECUTORS  
03:52PM 8 HAD SOME BLAME IN THAT CASE FOR NOT PRESERVING THE JEEP IN THAT  
03:52PM 9 CASE.

03:52PM 10 IF THE ACTS WERE DELIBERATE, WHETHER THEY WERE TAKEN IN  
03:52PM 11 GOOD FAITH.

03:52PM 12 I HAVEN'T HEARD ONE THING FROM MR. BRECHER IN THIS CASE  
03:52PM 13 THAT THE GOVERNMENT ACTED TRYING TO OBTAIN THIS EVIDENCE BY  
03:52PM 14 SUBPOENA AND THEN ENGAGING DORSEY & WHITNEY AFTERWARDS.

03:52PM 15 SO THOSE ARE THE FACTORS ON THE GOVERNMENT'S SIDE, AND I  
03:52PM 16 THINK EVERY SINGLE ONE OF THEM SUPPORTS THAT THE GOVERNMENT DID  
03:53PM 17 EVERYTHING RIGHT HERE AND IT WAS THWARTED IN ITS EFFORT TO GET  
03:53PM 18 INFORMATION, AND IT WOULD BE WRONG TO PERMIT THIS JURY, ON THE  
03:53PM 19 BASIS OF NO EVIDENCE, TO TRY TO MAKE A FINDING THAT THE  
03:53PM 20 GOVERNMENT WAS NEGLIGENT OR RECKLESS OR THAT IT FAILED TO  
03:53PM 21 PRESERVE SOMETHING.

03:53PM 22 SO THERE'S SIMPLY NO BASIS FOR THIS INSTRUCTION.

03:53PM 23 I'M HAPPY TO RESPOND IF THERE ARE PARTICULAR POINTS  
03:53PM 24 MR. BRECHER HAS MADE.

03:53PM 25 THERE'S ONE I WANT TO EMPHASIZE, WHICH IS THE COURT IS

03:53PM 1 RIGHT ON THE COMPARATOR ISSUE. DR. ROSENDORFF HAS NOT  
03:53PM 2 TESTIFIED THAT LIS BY ITSELF IS THE BE ALL, END ALL OF HOW TO  
03:53PM 3 GET TO THE BOTTOM OF WHETHER OR NOT THE TESTS WERE ACCURATE OR  
03:53PM 4 INACCURATE.

03:53PM 5 THE OTHER THING I WOULD LIKE TO POINT TO IN TERMS OF THEIR  
03:53PM 6 PROBATIVE VALUE, THE PROBATIVE VALUE OF THIS PARTICULAR  
03:53PM 7 EVIDENCE, IS THAT THE DEFENSE LIKES TO SPEAK AS IF LIS IS THE  
03:54PM 8 ONLY PLACE WHERE YOU CAN GET INFORMATION ABOUT THERANOS'S  
03:54PM 9 TESTING.

03:54PM 10 THERANOS WAS INVOLVED IN LAWSUITS FROM 2016 UP TO AND  
03:54PM 11 THROUGH THE DATE OF THE INDICTMENT. THEY'VE PRODUCED HUNDREDS  
03:54PM 12 OF THOUSANDS OF PAGES, IF NOT MILLIONS OF PAGES, ABOUT THEIR  
03:54PM 13 TESTING, INCLUDING DATA FROM LIS.

03:54PM 14 THE DEFENDANT HAS ALL OF THAT.

03:54PM 15 THERE ARE EMPLOYEES AT THERANOS, THERE IS INFORMATION  
03:54PM 16 PROVIDED TO CMS. THERANOS RETAINED FTI TO WORK WITH THE LIS  
03:54PM 17 DATABASE AND GENERATE DATA FROM THAT.

03:54PM 18 THE NOTION THAT THE ONLY PLACE THAT YOU COULD POSSIBLY GO  
03:54PM 19 IS THE WORKING COPY OF THE DATABASE IS SIMPLY NOT CORRECT, AND  
03:54PM 20 I THINK WEIGHS IN TERMS OF THE PREJUDICE THAT THEY'RE ARGUING  
03:54PM 21 FOR.

03:54PM 22 THE ONLY OTHER POINT I WANT TO MAKE, YOUR HONOR, IT'S  
03:54PM 23 IMPORTANT TO PUT INTO CONTEXT WHEN ALL OF THIS HAPPENED, WHICH  
03:54PM 24 IS OCTOBER OR -- YOU KNOW, WHEN I THINK MY FRIENDS ON THE OTHER  
03:55PM 25 SIDE ARE ARGUING THAT THE GOVERNMENT HAD NOTICE AND THAT IT

SHOULD HAVE GONE OUT AND GOTTEN THE SERVERS IN OCTOBER OF 2018,  
OR WE CAN EVEN MOVE IT BACK TO AUGUST OF 2018.

THAT'S POST INDICTMENT. THAT'S WHEN MR. BALWANI KNOWS HIS  
LIBERTY IS ON THE LINE FOR THESE PATIENT CHARGES. HE HAS  
RULE 17 SUBPOENA AUTHORITY AT THAT POINT. HE COULD HAVE SENT A  
PRESERVATION LETTER TO THE GOVERNMENT, LIKE THE ATTORNEYS DID  
IN THE SIVILLA CASE, SAYING THIS IS REALLY IMPORTANT TO ME,  
PLEASE, GOVERNMENT, PRESERVE THIS.

THERE'S NO EVIDENCE OF THAT. THERE'S NO EVIDENCE THAT HE  
ISSUED A RULE 17 SUBPOENA TO TRY TO GET THIS INFORMATION.

AND THERE'S EVERY REASON TO THINK, BECAUSE  
MR. CHANDRASEKARAN WAS HIS LITIGATION CONSULTANT, THAT HE HAD  
MORE INSIGHT INTO WHAT WAS GOING ON WITH THE LIS DATABASE THAN  
THE GOVERNMENT.

SO I'M NOT CASTING BLAME ON HIM FOR NOT GETTING IT, AND OF  
COURSE IT'S OUR BURDEN.

BUT I THINK IF THIS HAD THE UNIQUE EXCULPATORY VALUE THAT  
THE DEFENDANTS HAVE BEEN ADVOCATING BOTH AT THE MOTION TO  
SUPPRESS STAGE AND NOW, YOU WOULD SEE A PRESERVATION LETTER TO  
THE GOVERNMENT, YOU WOULD SEE A RULE 17 SUBPOENA SAYING, I'VE  
GOT TO GET THIS BECAUSE THIS IS THE ONLY WAY I CAN DEFEND  
MYSELF, AND IT IS -- THIS IS NOT EVIDENCE THAT THE GOVERNMENT  
UNIQUELY HAD AND SOMEHOW DESTROYED OR LOST.

THIS WAS IN THE POSSESSION OF THE THIRD PARTY. EVERYBODY  
HAD ACCESS TO LEGAL TOOLS TO GET IT. THE GOVERNMENT PURSUED

03:56PM 1 ONES THAT IT VIEWED AS THE RIGHT ONES AT THE RIGHT TIME, AND WE  
03:56PM 2 ARE WHERE WE ARE.

03:56PM 3 BUT FOR ALL OF THOSE REASONS, THIS INSTRUCTION REALLY  
03:56PM 4 WOULD, I THINK, UNFAIRLY PUT THE COURT'S IMPRIMATUR -- OR I MAY  
03:56PM 5 NOT HAVE THE RIGHT WORD THERE -- STAMP OF APPROVAL ON A  
03:56PM 6 PARTICULAR DEFENSE WHERE THEY CAN ARGUE AS LONG AS THEY WANT,  
03:57PM 7 YOU NEED THE LIS TO CONVICT, THE GOVERNMENT DIDN'T BRING IT TO  
03:57PM 8 YOU, YOU SHOULDN'T HOLD THEM TO THEIR BURDEN.

03:57PM 9 TO GO THE EXTRA ADDED STEP OF A REMEDIAL SANCTION ON THESE  
03:57PM 10 FACTS IS JUST NOT SUPPORTED AND NOT SUPPORTED BY A SINGLE CASE  
03:57PM 11 THAT THEY HAVE CITED.

03:57PM 12 THE COURT: THANK YOU.

03:57PM 13 MR. BRECHER.

03:57PM 14 MR. BRECHER: THANK YOU, YOUR HONOR.

03:57PM 15 I'M RELIEVED TO HEAR THAT MR. LEACH IS NOT CASTING BLAME  
03:57PM 16 ON MR. BALWANI, AND THAT WAS NOT IN THE GOVERNMENT'S PLEADINGS  
03:57PM 17 A FEW WEEKS AGO WHEN THEY SAID THAT MR. BALWANI, THROUGH HIS  
03:57PM 18 SILENCE, ALLOWED THE LIS TO BE DISASSEMBLED.

03:57PM 19 OBVIOUSLY WE KNOW FROM THE E-MAIL RECORD THAT NOTHING OF  
03:57PM 20 THE SORT IS TRUE, DESPITE THE GOVERNMENT'S MANY PUBLIC  
03:57PM 21 PLEADINGS TO THE CONTRARY.

03:57PM 22 BUT I WANT TO FOCUS ON THIS INSTRUCTION HERE. MR. LEACH  
03:57PM 23 IS CORRECT THAT WE DO NOT CITE A CASE IN WHICH THE COURT HAS  
03:57PM 24 AWARDED THIS INSTRUCTION WHEN INFORMATION WAS DISASSEMBLED BY A  
03:57PM 25 THIRD PARTY.

03:57PM 1 BUT THERE ARE TWO PROBLEMS WITH THAT ARGUMENT. FIRST, AS  
03:58PM 2 WE HEARD FROM MR. SONNIER TODAY, AND THIS DID COME INTO  
03:58PM 3 EVIDENCE, THE DISASSEMBLY DIDN'T AFFECT THE GOVERNMENT'S  
03:58PM 4 ABILITY TO COLLECT THE INFORMATION, AND THERE'S NO INDICATION  
03:58PM 5 ABOUT WHEN EXACTLY THAT ABILITY CEASED.

03:58PM 6 SECOND, ROBERTSON ITSELF, A CASE THAT MR. LEACH TALKED  
03:58PM 7 ABOUT, A CASE THAT I TALKED ABOUT, NOTES THAT WHETHER THE  
03:58PM 8 GOVERNMENT LOST OR DESTROYED THE EVIDENCE, WHETHER IT WAS IN  
03:58PM 9 THE GOVERNMENT'S POSSESSION IS JUST ONE FACTOR. IF THAT FACTOR  
03:58PM 10 ALONE WERE DISPOSITIVE, THEN IT WOULDN'T BE LISTED. IT WOULD  
03:58PM 11 JUST BE A REQUIREMENT IN ORDER TO GET SUCH AN INSTRUCTION.

03:58PM 12 MR. LEACH SAYS THAT IT SHOULD BE READ AS THE PRIMARY  
03:58PM 13 FACTOR, BUT HE OFFERS NO CASE LAW AND NO ANALYSIS TO SUPPORT  
03:58PM 14 THAT.

03:58PM 15 SECOND, THERE SEEMS TO BE A LITTLE BIT OF CONFLICT BETWEEN  
03:58PM 16 WHETHER WE'RE RELYING ONLY ON THE EVIDENCE THAT HAS BEEN  
03:58PM 17 INTRODUCED THUS FAR AT TRIAL OR THE EVIDENCE THAT THE COURT CAN  
03:58PM 18 RELY ON IN MAKING ITS LOUD HAWK BALANCING, WHICH IS WHAT HAS  
03:58PM 19 BEEN PROFFERED.

03:58PM 20 BUT YOU SHOULD KNOW, THE SUGGESTION THAT THIS INFORMATION  
03:59PM 21 WAS DESTROYED OR COULDN'T BE RECOVERED IS CERTAINLY NOT  
03:59PM 22 SUPPORTED BY ANY TRIAL EVIDENCE.

03:59PM 23 BUT I THINK IT'S NOW BECOME CLEAR, I HOPE IT HAS BECOME  
03:59PM 24 CLEAR, THAT WHAT THE GOVERNMENT HAS BEEN SUGGESTING IN ITS  
03:59PM 25 PAPERS AND IN ITS ARGUMENTS FOR THE LAST YEAR PLUS, THAT THESE

03:59PM 1 INSIDERS WITH DEEP KNOWLEDGE OF THE LIS DREW CONTRARY  
03:59PM 2 CONCLUSIONS IS SIMPLY NOT TRUE.

03:59PM 3 THEY RESTED ON THE OPINION OF THE LAST I.T. GUY STANDING  
03:59PM 4 AT A COMPANY THAT WAS CIRCLING THE DRAIN AND OF A CONSULTANT  
03:59PM 5 PERSON WHO -- AND OF A CONSULTANT WHOSE JOB WAS TO MOVE  
03:59PM 6 EQUIPMENT FROM ONE LOCATION TO ANOTHER. THAT'S WHO THEY ARE  
03:59PM 7 RELYING ON.

03:59PM 8 WE OBVIOUSLY RELIED ON MR. SONNIER.

03:59PM 9 BUT FOCUSING ON WHAT HAS COME INTO EVIDENCE, WE KNEW THE  
03:59PM 10 GOVERNMENT WAS ADVISED, WAS SPECIFICALLY ADVISED OF AT LEAST  
03:59PM 11 TWO COURSES OF ACTION THAT UNREBUTTED EXPERT TESTIMONY SAYS  
03:59PM 12 WOULD HAVE LED TO SECURING THIS EVIDENCE.

03:59PM 13 AND THE GOVERNMENT CHOSE NOT TO UNDERTAKE THOSE ACTIONS.  
04:00PM 14 INDEED, THAT WASN'T EVEN A DOCUMENT THAT THEY PUT INTO  
04:00PM 15 EVIDENCE. THAT CAME IN ON CROSS.

04:00PM 16 SO I DO THINK WE'RE DEALING WITH, AT A MINIMUM,  
04:00PM 17 NEGLIGENCE, AND GIVEN THE EXPRESS WARNING, I THINK  
04:00PM 18 RECKLESSNESS.

04:00PM 19 I WANT TO TURN VERY BRIEFLY TO THE SECOND REASON -- TO THE  
04:00PM 20 SECOND ISSUE, THE PRONG -- THE PREJUDICE PRONG.

04:00PM 21 AND MR. LEACH IS RIGHT, THE DEFENSE DOES BEAR THE BURDEN  
04:00PM 22 THERE. I DON'T THINK I DENIED THAT IN MY OPENING REMARKS, BUT  
04:00PM 23 IF I DID, I MUST HAVE MISSPOKEN.

04:00PM 24 THAT CITATION FOR DR. ROSENDORFF'S TESTIMONY, MY COLLEAGUE  
04:00PM 25 JUST HANDED IT UP, IT'S APRIL 22ND, AND IT'S TRANSCRIPT

04:00PM 1 PAGES 3601 THROUGH 3604. AND I THINK THAT THAT WILL BE  
04:00PM 2 INSTRUCTIVE FOR THE COURT AS IT CONSIDERS THE VALUE OF LIS AND  
04:00PM 3 WHAT IT COULD SHOW.

04:00PM 4 LAST, YOUR HONOR, THERE'S NOTHING THAT ACTUALLY CAME INTO  
04:00PM 5 EVIDENCE IN THIS TRIAL THAT SUGGESTS ANYTHING CONTRARY TO  
04:01PM 6 MR. SONNIER'S UNDERSTANDING.

04:01PM 7 AND THE GOVERNMENT CERTAINLY HAS NOT PUT IN ANY EVIDENCE  
04:01PM 8 ABOUT MR. BALWANI'S ABILITY, SUBPOENA POWER. THAT JUST DIDN'T  
04:01PM 9 COME UP.

04:01PM 10 SO I DON'T KNOW THAT THE COURT SHOULD BE CONSIDERING THAT  
04:01PM 11 IN -- AS IT CRAFTS THIS INSTRUCTION.

04:01PM 12 THE LAST POINT, YOUR HONOR, IS THAT I APPRECIATE MR. LEACH  
04:01PM 13 ACKNOWLEDGING THAT WE CAN ARGUE ALL OF THESE POINTS. CERTAINLY  
04:01PM 14 WE CAN ARGUE FROM ANYTHING THAT COMES INTO EVIDENCE.

04:01PM 15 BUT I THINK WHAT MATTERS HERE IS GIVING THE JURY AN  
04:01PM 16 APPROPRIATE FRAMEWORK TO UNDERSTAND HOW THEY CAN SEE THESE  
04:01PM 17 ISSUES, AND IN THIS CASE WE HAVE DRAWN ON NOT ONLY THE NINTH  
04:01PM 18 CIRCUIT MODEL INSTRUCTION FOR MISSING EVIDENCE, BUT ALSO  
04:01PM 19 COMPARABLE MODEL INSTRUCTIONS FOR NEGLIGENCE AND RECKLESSNESS.

04:01PM 20 EXCUSE ME. WE HAVE PROPOSED A PURELY PERMISSIVE  
04:01PM 21 INSTRUCTION, A PURELY PERMISSIVE INFERENCE, AND WE JUST WANT TO  
04:01PM 22 GIVE THE JURY AN OPPORTUNITY TO UNDERSTAND HOW THIS EVIDENCE  
04:01PM 23 COULD COME INTO PLAY GIVEN THAT THEY HAVE HEARD FROM A SERIES  
04:02PM 24 OF DOCTORS, ALL OF WHOM HAVE SAID WE HAVE HAD HUNDREDS OF  
04:02PM 25 PATIENTS GET TESTED AT THERANOS AND THE GRAND TOTAL OF PROBLEMS

04:02PM 1 WE FOUND WERE TWO.

04:02PM 2 I THINK THIS IS APPROPRIATE HERE GIVEN THE TESTIMONY THAT  
04:02PM 3 YOU HEARD THIS MORNING.

04:02PM 4 OTHER THAN THAT, YOUR HONOR, I'M JUST HAPPY TO ANSWER ANY  
04:02PM 5 OF THE COURT'S QUESTIONS.

04:02PM 6 THE COURT: OKAY.

04:02PM 7 ANYTHING FURTHER, MR. LEACH?

04:02PM 8 MR. LEACH: I'D JUST LIKE TO RESPOND BRIEFLY TO ONE  
04:02PM 9 POINT, YOUR HONOR, WHICH IS THE E-MAIL THAT CAME INTO EVIDENCE  
04:02PM 10 FOR THE GOVERNMENT'S NOTICE IS FROM AN ALS SUPERVISOR NAMED  
04:02PM 11 SUTTON PEIRCE WHO THE JURY HAS NOT HEARD FROM AND KNOWS NOTHING  
04:02PM 12 ABOUT THE CONTEXT OF THAT.

04:02PM 13 AND WHAT SHE WROTE IN THE E-MAIL WAS PERHAPS THE DEFENSE  
04:02PM 14 CAN BE PERSUADED TO MAKE THE SERVERS AVAILABLE IN OUR  
04:02PM 15 ENVIRONMENT. THAT'S THROWING OUT ONE OF FOUR IDEAS.

04:02PM 16 THERE'S NO REASON FOR THE GOVERNMENT TO THINK THAT  
04:02PM 17 DORSEY & WHITNEY IS NOT GOING TO PRESERVE WHATEVER IT HAS AT  
04:02PM 18 THAT POINT IN TIME, NONE.

04:02PM 19 MR. SONNIER DIDN'T PROVIDE THAT. NO WITNESS COULD PROVIDE  
04:03PM 20 THAT. THERE SIMPLY IS NO REASON FOR -- YOU KNOW, IT'S ONE  
04:03PM 21 THING TO SAY THAT THE GOVERNMENT WAS GIVEN THIS HYPOTHETICAL  
04:03PM 22 SUGGESTION.

04:03PM 23 BUT WHAT THEY NEED TO DO IS SAY THE CORE OF THEIR  
04:03PM 24 NEGLIGENCE THEORY IS THAT THE GOVERNMENT SHOULD ASSUME THE  
04:03PM 25 EVIDENCE IS GOING TO BE DESTROYED IF IT DOESN'T GO OUT AND ACT

04:03PM 1 IMMEDIATELY, AND THERE'S NO BASIS FOR THAT ASSUMPTION IN THE  
04:03PM 2 CONTEXT HERE.

04:03PM 3 IN TERMS OF THE FRAMEWORK THAT MR. BRECHER IS LOOKING FOR,  
04:03PM 4 HE HAS INSTRUCTIONS ON THE GOVERNMENT'S BURDEN OF PROOF, THE  
04:03PM 5 DEFENSE'S NEED TO NOT COME FORWARD WITH ANY EVIDENCE, HE HAS  
04:03PM 6 ALL OF THE LEGAL INSTRUCTIONS AND FRAMEWORK THAT THEY NEED TO  
04:03PM 7 MAKE THE ARGUMENTS THAT THEY WANT.

04:03PM 8 AND THIS WAS SOMETHING THAT THE NINTH CIRCUIT POINTED OUT  
04:03PM 9 IN THE ROBERTSON CASE IN DENYING A REMEDIAL INSTRUCTION UNDER  
04:03PM 10 FACTS THAT ARE DRAMATICALLY WORSE THAN THE FACTS HERE.

04:03PM 11 THE NINTH CIRCUIT ON THE PREJUDICE PRONG WAS CAREFUL TO  
04:03PM 12 EMPHASIZE ALL OF THESE ARE ARGUMENTS THAT THE DEFENDANT COULD  
04:04PM 13 MAKE AND DID MAKE BASED ON THE EVIDENCE IN THE RECORD.

04:04PM 14 AND THAT'S ALL WE'RE ASKING FOR THE COURT TO DO HERE IS  
04:04PM 15 NOT PUT ITS THUMB ON THE SCALES IN ALLOWING A REMEDIAL  
04:04PM 16 INSTRUCTION WHERE THE JURY CAN DRAW A NEGATIVE INFERENCE BASED  
04:04PM 17 ON THIS FACTUAL RECORD HERE WHERE IT'S NOT SUPPORTED.

04:04PM 18 THE COURT: ALL RIGHT. THANK YOU.

04:04PM 19 MR. BRECHER: JUST VERY BRIEFLY.

04:04PM 20 FIRST, YOUR HONOR, I DON'T THINK A PERMISSIVE INSTRUCTION  
04:04PM 21 WOULD BE PUTTING THE THUMB ON ANY SCALE. ALL IT IS DOING IS  
04:04PM 22 OFFERING THE JURY A CHOICE.

04:04PM 23 AND SECOND, I'M STILL A LITTLE BIT CONFUSED, BUT AS TO THE  
04:04PM 24 POINT ABOUT WHEN THE GOVERNMENT RECEIVED THIS ADVICE AND WHAT  
04:04PM 25 IT COULD HAVE DONE THEN AND WHAT THE GOVERNMENT'S REASONABLE

04:04PM 1 UNDERSTANDINGS WERE AT THE TIME, I THINK THE POINT IS THE  
04:04PM 2 GOVERNMENT NEVER TRIED TO GET THE SERVERS.

04:04PM 3 AND REGARDLESS OF WHAT SUTTON PEIRCE SAID, I'M NOW HEARING  
04:04PM 4 THE SUGGESTION THAT THESE PROSECUTORS DIDN'T THINK THAT THE  
04:05PM 5 ASSIGNEE WOULDN'T HAVE PRESERVED EVIDENCE.

04:05PM 6 WELL, THEY ALREADY HAD THE BACKUP COPY. THEY ALREADY KNEW  
04:05PM 7 IT DIDN'T WORK. THEY COULD HAVE TAKEN OTHER STEPS, AND THEY  
04:05PM 8 DIDN'T. THEY WERE ADVISED THAT THEY COULD HAVE TAKEN THOSE  
04:05PM 9 STEPS, AND THEY DIDN'T. AND THOSE OTHER STEPS WOULD HAVE  
04:05PM 10 WORKED.

04:05PM 11 SO I THINK THAT THE INSTRUCTION IS FAIR.

04:05PM 12 OTHER THAN THAT, NOTHING ELSE, YOUR HONOR.

04:05PM 13 THE COURT: THANK YOU. THANK YOU VERY MUCH.

04:05PM 14 THIS IS A BIT OF A HYBRID AND PERPLEXING PROBLEM. I THINK  
04:05PM 15 YOU BOTH AGREE ON THE FACTS HERE, THAT IS, AND THE EVIDENCE  
04:05PM 16 SHOWS THIS, DURING THE INVESTIGATION THERE WERE SUBPOENAS. WE  
04:05PM 17 KNOW THAT THERE WERE S.E.C. SUBPOENAS. THE EVIDENCE ISN'T IN  
04:05PM 18 THIS CASE, BUT WE KNOW THAT.

04:05PM 19 WE KNOW THAT, AT LEAST FROM EVIDENCE THAT WAS INTRODUCED  
04:05PM 20 IN THIS CASE, THAT THE GOVERNMENT RECEIVED THE LIS OR A COPY OF  
04:05PM 21 IT PURSUANT TO THE REQUEST THAT WAS -- YOUR CLIENT RECEIVED THE  
04:06PM 22 SAME THING.

04:06PM 23 AND THEN WE KNOW THAT THE GOVERNMENT HAD DIFFICULTIES  
04:06PM 24 RETRIEVING THE INFORMATION, OPENING IT, IF YOU WILL.

04:06PM 25 THE E-MAIL THAT WAS SHOWN TODAY FOR NOTICE PURPOSE

04:06PM 1 DESCRIBES INTERNAL DISCUSSIONS FROM A GOVERNMENT I.T. EMPLOYEE  
04:06PM 2 WITH SUGGESTIONS ON WHAT TO DO NEXT.

04:06PM 3 AND I THINK THE CRITIQUE THAT THE DEFENSE HAS IS THAT THEY  
04:06PM 4 DIDN'T FOLLOW THEIR OWN I.T. PERSON'S -- ONE OF THE  
04:06PM 5 SUGGESTIONS, WHICH IS TO GET THE SERVERS, AND SEE IF THEY'LL  
04:06PM 6 GIVE US THE SERVERS, AND WE CAN PUT THEM IN THE WORKPLACE HERE.  
04:06PM 7 THAT SEEMS TO BE WHAT THEY SAID. GO GET THOSE AND BRING THEM  
04:06PM 8 BACK TO OUR OFFICE, AND WE'LL TRY TO DO IT IN OUR OFFICE, WHICH  
04:06PM 9 IS A LITTLE DIFFERENT.

04:06PM 10 BUT I LOOK AT THIS AND I, I DO THINK THAT LOUD HAWK -- IT  
04:06PM 11 DOES REQUIRE A LOUD HAWK ANALYSIS, AND LET ME JUST SAY FOR THE  
04:07PM 12 RECORD, THAT'S THE STANDARD THAT THE COURT IS EXERCISING HERE  
04:07PM 13 AS IT LOOKS AT THIS PROBLEM AND THE ISSUE OF WHETHER OR NOT AN  
04:07PM 14 INSTRUCTION IS WARRANTED HERE.

04:07PM 15 AND GOING THROUGH THE LOUD HAWK FACTORS, WHICH IS WHAT I  
04:07PM 16 INTEND TO DO, AND I THINK YOU'VE ALL DONE THIS ALREADY, AND THE  
04:07PM 17 FIRST ONE IS IN EVALUATING THE QUALITY OF THE GOVERNMENT'S  
04:07PM 18 CONDUCT HERE, WAS THE EVIDENCE LOST OR DESTROYED WHILE IT WAS  
04:07PM 19 IN THE GOVERNMENT'S CUSTODY?

04:07PM 20 AND I THINK THE ANSWER TO THAT IS NO, THEY DID NOT HAVE  
04:07PM 21 IT.

04:07PM 22 AND THE CASES, THE OTHER CASES THAT WE HAVE TALKED ABOUT  
04:07PM 23 DESCRIBE EVIDENCE WHERE THE GOVERNMENT ACTUALLY EITHER HAD IT  
04:07PM 24 OR HAD AVAILABILITY TO IT.

04:07PM 25 THE VIDEO FROM THE POST OFFICE ABOUT MS. ROBERTSON,

04:07PM 1 APPARENTLY THERE'S SOME ALLEGATION THAT SHE SECRETED SOME OF  
04:07PM 2 THE MAIL IN THE MAIL BAG AND IN THE VERY ROOM THAT SHE WAS  
04:08PM 3 BEING INTERVIEWED BY THE C.I.D., AND THAT WAS NOT PICKED UP  
04:08PM 4 UNTIL LATER.

04:08PM 5 BUT THERE THE GOVERNMENT HAD THE VIDEOS. THEY FAILED TO  
04:08PM 6 SECURE THE VIDEOS, ALBEIT I THINK THERE WAS TESTIMONY THAT THE  
04:08PM 7 VIDEOS WOULDN'T HAVE BEEN DISPOSITIVE ANYHOW, THEY WERE GRAINY  
04:08PM 8 AND ANGLES WERE BAD AND ALL OF THAT.

04:08PM 9 BUT THE GOVERNMENT, AT LEAST THE EVIDENCE FROM THE COURT'S  
04:08PM 10 PERSPECTIVE AND AS I SEE IT, THE GOVERNMENT NEVER HAD THE LIS  
04:08PM 11 TO DESTROY.

04:08PM 12 SO THIS ISN'T A CASE WHERE THEY WERE IN POSSESSION OF A  
04:08PM 13 LIS OR SOMETHING, AND THEN THEY LEFT IT IN THE BACKGROUND, IT  
04:08PM 14 WAS -- WHATEVER HAPPENED TO IT, IT WAS CORRUPTED, A DOG ATE THE  
04:08PM 15 HOMEWORK, IF YOU'LL PARDON ME. NONE OF THAT HAPPENED HERE  
04:08PM 16 BECAUSE THEY NEVER HAD IT.

04:08PM 17 WHAT THEY HAD WAS -- THEY NEVER WERE ABLE TO GET INTO IT.

04:08PM 18 AND I THINK MR. SONNIER SAID THE SAME THING, HE WAS NEVER  
04:08PM 19 ABLE TO ACCESS WHAT HE HAD, WHICH IS THE SAME THING THAT THE  
04:08PM 20 GOVERNMENT HAD.

04:09PM 21 DID THE GOVERNMENT ACT IN DISREGARD FOR THE INTEREST OF  
04:09PM 22 THE ACCUSED?

04:09PM 23 THE EVIDENCE DOESN'T SUPPORT THAT. I DON'T THINK YOU'RE  
04:09PM 24 ARGUING THAT THAT HAPPENED, OTHER THAN IN THE NEGLIGENCE THAT  
04:09PM 25 WAS CONTRARY TO YOUR CLIENT'S INTEREST.

04:09PM 1 BUT THERE IS NOTHING IN THE RECORD THAT SUGGESTS THAT  
04:09PM 2 THERE WAS ANY DECISION OR ACTS OR CONDUCT BY THE GOVERNMENT  
04:09PM 3 THAT WERE DIRECTED TOWARDS KEEPING INFORMATION FROM THE  
04:09PM 4 DEFENSE, HIDING INFORMATION FROM THE DEFENSE IN SOME WAY THAT  
04:09PM 5 DISREGARDED THE INTEREST OF THE ACCUSED.

04:09PM 6 BAD CONDUCT IS WHAT I'M SUGGESTING HERE, AND I DON'T SEE  
04:09PM 7 ANYTHING IN THE RECORD THAT SUPPORTS THAT.

04:09PM 8 WAS THE GOVERNMENT NEGLIGENT IN FAILING TO ADHERE TO  
04:09PM 9 ESTABLISHING REASONABLE STANDARDS OF CARE FOR POLICE IN  
04:09PM 10 PROSECUTORIAL FUNCTIONS? THAT'S FROM LOUD HAWK.

04:10PM 11 REMEMBER THE LOUD HAWK CASE? IT INVOLVED DYNAMITE. IT  
04:10PM 12 INVOLVED A SMALL POLICE DEPARTMENT, AND APPARENTLY THERE WAS A  
04:10PM 13 ROGUE SHERIFF'S DEPUTY WHO DECIDED TO, CONTRARY TO THE  
04:10PM 14 GOVERNMENT'S REQUEST, TO STOP THE VEHICLE.

04:10PM 15 AND THEN IN STOPPING THE VEHICLE, THEN OF COURSE THE  
04:10PM 16 SHERIFF'S DEPARTMENT IS OF COURSE LEFT WITH, WHAT DO WE DO WITH  
04:10PM 17 THIS DYNAMITE THAT IS KIND OF WEEPING AND IT'S VERY -- YOU  
04:10PM 18 KNOW, IT'S VOLATILE? WELL, THEY HAD NO PLACE TO STORE IT, SO  
04:10PM 19 THEY DESTROYED IT.

04:10PM 20 FORTUNATELY THERE WERE PHOTOGRAPHS TAKEN, WHICH IS  
04:10PM 21 SECONDARY EVIDENCE, WHICH WE'LL TALK ABOUT IN JUST A MOMENT.

04:10PM 22 BUT THAT TYPE OF SITUATION DOESN'T EXIST HERE.

04:10PM 23 AND WHAT ARE THE REASONABLE STANDARDS OF CARE? AND I  
04:10PM 24 THINK THE GOVERNMENT -- EXCUSE ME, THE DEFENSE MAKES THE  
04:10PM 25 ARGUMENT THAT, WELL, THEY KNEW THAT THIS DATABASE, THE ORIGINAL

04:10PM 1 DATABASE EXISTED, AND SO THAT'S THE STANDARD OF CARE, WHICH  
04:10PM 2 SUPPORTS A NEGLIGENCE THEORY THAT THEY SOMEHOW FELL BELOW THE  
04:11PM 3 CONDUCT -- THEIR CONDUCT FELL BELOW THE STANDARD OF CARE.

04:11PM 4 BUT IN THE TOTALITY OF LOOKING AT THE CIRCUMSTANCES HERE,  
04:11PM 5 THE GOVERNMENT, AND I THINK THERE'S DOCUMENTS IN, THE DORSEY  
04:11PM 6 LETTER AND THE WILMER HALE LETTERS SUPPORT CONTINUOUS  
04:11PM 7 CONVERSATION ABOUT RETRIEVING THE LIS, TRYING TO FIND OUT, WHAT  
04:11PM 8 CAN WE DO TO OPEN THIS? HOW CAN WE RESOLVE THIS?

04:11PM 9 THEY'VE RELIED, IT APPEARS, ON THE REPRESENTATIONS OF  
04:11PM 10 THERANOS'S ATTORNEYS WHEN THEY RECEIVED WHAT THEY SUBPOENAED  
04:11PM 11 AND WHAT THEY ASKED FOR.

04:11PM 12 AND ARE WE SAYING THEN THAT EVERY TIME, PURSUANT TO A  
04:11PM 13 SUBPOENA, THAT THE GOVERNMENT RECEIVES A DOCUMENT OR A PRODUCT  
04:11PM 14 OR AN ITEM FROM COUNSEL IN RESPONSE TO THE SUBPOENA THAT THEY  
04:11PM 15 SHOULD BE SUSPICIOUS OF IT AND TAKE EXTRA STEPS? IS THAT THE  
04:12PM 16 STANDARD OF CARE?

04:12PM 17 OR IS THERE A STANDARD OF CARE THAT THEY SHOULD RELY ON  
04:12PM 18 MEN AND WOMEN WHO SWEAR TO SUPPORT THE CONSTITUTION AND FOLLOW  
04:12PM 19 THE RULES OF COURT AND THE RULES OF PRACTICE AND WILL PROVIDE  
04:12PM 20 WHAT THE SUBPOENA ASKS FOR IN GOOD FAITH? AND IS THAT THE  
04:12PM 21 STANDARD OF CARE? CAN THEY PLACE TRUST IN THE LAWYERS WHO  
04:12PM 22 REPRESENT THE COMPANY IN THEIR CONDUCT? CAN THEY RELY ON THEM,  
04:12PM 23 COUNSEL WHO RESPOND APPROPRIATELY TO A GRAND JURY SUBPOENA, AS  
04:12PM 24 MR. LEACH POINTS OUT, RECOGNIZING THAT FAILURE TO DO THAT COULD  
04:12PM 25 RESULT IN AN OBSTRUCTION OF JUSTICE INVESTIGATION ON THEIR OWN?

04:12PM 1 AND WITH THAT HANGING OVER A SUBPOENA, COUNSEL,  
04:12PM 2 EXPERIENCED COUNSEL -- AND CORPORATIONS AND BUSINESSES TEND TO  
04:12PM 3 ONLY HIRE EXPERIENCED COUNSEL, THESE TWO FIRMS ARE  
04:13PM 4 INTERNATIONAL FIRMS -- DOESN'T THAT SUPPORT THE GOVERNMENT'S AT  
04:13PM 5 LEAST TRUST OR BELIEF THAT, OKAY, WHAT WE RECEIVED IS FULSOME,  
04:13PM 6 IS WHOLESOME, AND IS NOT CORRUPTED?

04:13PM 7 I SUPPOSE I LOOK AT IT, AND WHAT ABOUT THE GOVERNMENT'S  
04:13PM 8 CONDUCT WAS UNREASONABLE IN THE TOTALITY OF THE CIRCUMSTANCES  
04:13PM 9 IN THAT REGARD?

04:13PM 10 THE NEXT ANALYSIS IS DELIBERATE. WERE THE ACTS  
04:13PM 11 DELIBERATE? WERE THEY DONE IN GOOD FAITH, WITH REASONABLE GOOD  
04:13PM 12 FAITH, AND IS THERE REASONABLENESS HERE?

04:13PM 13 AND I HAVE TO SAY, DISAPPOINTING AS THE RESULT WAS, I HAD  
04:13PM 14 WISHED, AND WE ALL HAD HOPED, THAT WHEN THE GOVERNMENT WAS  
04:13PM 15 GIVEN THE COPY THAT THEY WERE, THAT IT HAD BEEN WHOLESOME AND  
04:13PM 16 ACCESSIBLE AS THEY EXPECTED. I DO THINK THAT THERE WAS GOOD  
04:13PM 17 FAITH IN RECEIPT OF WHAT THEY HAD.

04:13PM 18 NOW, I THINK THE FAULT THAT YOU -- AND IT'S ENTIRELY  
04:14PM 19 APPROPRIATE FOR THE DEFENSE TO BE CRITICAL OF THE PROSECUTION  
04:14PM 20 HERE AND THE EVIDENCE THAT WAS PRESENTED, AND IT'S ENTIRELY  
04:14PM 21 APPROPRIATE FOR YOU TO SAY, THE DEFENSE, TO SAY THEY COULD  
04:14PM 22 HAVE, THEY SHOULD HAVE DONE MORE, AND MR. SONNIER SUPPORTS  
04:14PM 23 THAT. THEY SHOULD HAVE DONE THAT.

04:14PM 24 AND THAT IS FAIR GAME FOR THIS JURY TO HEAR THAT IF THE  
04:14PM 25 GOVERNMENT, THE FULL POWER OF THE UNITED STATES GOVERNMENT

04:14PM 1 COMES AND BRINGS SOMEONE TO BEAR IN A FEDERAL PROSECUTION, THEY  
04:14PM 2 BETTER DARN WELL HAVE THEIR DUCKS LINED UP AND DO IT CORRECTLY,  
04:14PM 3 LADIES AND GENTLEMEN, AND HERE'S THE FAILURE IN THIS CASE.

04:14PM 4 AND THIS IS THE QUESTION ALSO THAT I WANTED TO MENTION  
04:14PM 5 ABOUT WAS THERE SECONDARY OR SUBSTITUTE EVIDENCE IN THE CASE?

04:14PM 6 AND YOU AND I, MR. BRECHER, AND YOUR COLLEAGUE,  
04:14PM 7 MR. COOPERSMITH, HAVE TALKED ABOUT THAT AND HAVE ACKNOWLEDGED,  
04:14PM 8 YES, WE COULD GET UP AND STATE RIGHT NOW WITH GREAT PRIDE, THE  
04:15PM 9 STATE OF THE EVIDENCE RIGHT NOW IS INSUFFICIENT BECAUSE THEY  
04:15PM 10 HAVE NOT PUT THE LIST TOGETHER AND ALL THEY HAVE PUT, THE  
04:15PM 11 GOVERNMENT, IN FRONT OF YOU IS, COUNT THEM ON ONE HAND, THE  
04:15PM 12 PEOPLE WHO HAVE SAID THEY HAVE HAD BAD TESTS, AND NOW LET'S  
04:15PM 13 STEP BACK, LADIES AND GENTLEMEN, AND LOOK AT THE NUMBER OF  
04:15PM 14 PEOPLE.

04:15PM 15 I THINK YOU INTRODUCED THE ACRONYM WAS THE CWAC, THE  
04:15PM 16 WOMEN'S CLINIC, WHICH SHOWS MANY, MANY OTHER INACCURATE TESTS,  
04:15PM 17 SO THAT SECONDARY TEST I THINK SUPPORTS YOUR ARGUMENT THAT IT  
04:15PM 18 MIGHT BE PERSUASIVE TO THIS JURY THAT THE GOVERNMENT HAS NOT  
04:15PM 19 MET THEIR BURDEN IN REGARDS TO CONSISTENT RELIABILITY AND  
04:15PM 20 ACCURACY OF THE TESTS.

04:15PM 21 YOU HAVE THAT ARGUMENT NOW AND, YOU KNOW, I DON'T KNOW IF  
04:15PM 22 THE GOVERNMENT IS CONCERNED ABOUT THAT. THEY SHOULD BE, I  
04:15PM 23 SUPPOSE, WHEN YOU BALANCE THOSE WITNESSES, AS YOU SAY IT,  
04:15PM 24 MR. BRECHER, THAT THEY JUST PUT A HANDFUL OF PEOPLE ON, AND  
04:15PM 25 YET, THERE'S MULTIPLE, MULTIPLE PIECES OF EVIDENCE THAT SUPPORT

04:16PM 1 ACCURACY AS OPPOSED TO THOSE THAT PUT ON.

04:16PM 2 SO THE COURT FINDS THAT SECONDARY OR SUBSTITUTE EVIDENCE,  
04:16PM 3 I'LL CALL IT THAT, THAT ABILITY TO MAKE THAT ARGUMENT IS NOT AT  
04:16PM 4 ALL PRECLUDED, AND YOU'RE NOT IN ANY WAY DIMINISHED TO ARGUE  
04:16PM 5 THAT TO THE JURY.

04:16PM 6 I DON'T SEE THERE WAS BAD FAITH ON THE PART OF THE  
04:16PM 7 GOVERNMENT. I DON'T SEE ANY DELIBERATE ACTIONS. THE EVIDENCE  
04:16PM 8 DOESN'T SUPPORT THAT.

04:16PM 9 AND YOU'VE SEEN THAT IN ONE OF THE MIL ORDERS BOTH IN THIS  
04:16PM 10 CASE AND IN MS. HOLMES'S CASE, TOO. I JUST WANT TO SAY, IN  
04:16PM 11 THOSE ORDERS THE COURT MENTIONED THAT AND RECOGNIZED IN THOSE  
04:16PM 12 ORDERS THAT THE GOVERNMENT DIDN'T DESTROY THIS. IT WASN'T  
04:16PM 13 DESTROYED BY THEM.

04:16PM 14 I THINK -- I JUST WANT TO MAKE THE RECORD CLEAR. THE  
04:16PM 15 COURT DID USE THE WORD IT MAY BE, MAY BE THAT THEY WERE  
04:16PM 16 NEGLIGENT AT MOST. AND I USED THAT PHRASE IN IDENTIFYING THE  
04:17PM 17 GOVERNMENT'S CONDUCT. MAYBE IT WAS NEGLIGENT. IT WAS NOT A  
04:17PM 18 FINDING OF NEGLIGENCE.

04:17PM 19 BUT IT WAS -- WHAT IT WAS, WAS A WAY TO DISTINGUISH AT  
04:17PM 20 LEAST SOME SPECIFIC ABHORRENT CONDUCT BY THE GOVERNMENT WHICH I  
04:17PM 21 DON'T THINK YOU'RE ARGUING EXISTS. BUT THE COURT DOESN'T FIND  
04:17PM 22 IT.

04:17PM 23 WHEN I BALANCE, MR. BRECHER, WHEN I LOOK THROUGH THE  
04:17PM 24 LOUD HAWK ANALYSIS AND DO THE BALANCING, AND NOW WHAT FORMER  
04:17PM 25 JUSTICE KENNEDY SUGGESTED -- AND THAT WAS AN INTERESTING

04:17PM 1 OPINION, WASN'T IT, THE LOUD HAWK OPINION, THERE WERE -- I  
04:17PM 2 WONDER WHAT THAT CONFERENCE WAS LIKE.

04:17PM 3 BUT WHAT WE GET, WHAT WE GET IN THE INSTRUCTION, WE GET  
04:17PM 4 THEN JUDGE KENNEDY'S CONCURRENCE, AND THE MAJORITY OF THE PANEL  
04:17PM 5 SAW THE WISDOM OF THAT GUIDANCE, AND THAT'S WHAT HAS GUIDED  
04:17PM 6 COURTS NOW IN THIS CIRCUIT AND IT GUIDES THIS COURT WHEN IT  
04:18PM 7 DOES THIS ANALYSIS.

04:18PM 8 AND WHEN I DO THAT BALANCING, I HAVE TO SAY THAT IN  
04:18PM 9 DOING -- IN CONSIDERING THE TOTALITY OF THE EVIDENCE AS TO THIS  
04:18PM 10 ISSUE AND THE EVIDENCE THAT'S BEFORE THE COURT AS TO THIS  
04:18PM 11 ISSUE, I DO NOT FIND THAT IT WOULD BE APPROPRIATE TO GIVE THE  
04:18PM 12 INSTRUCTION THAT YOU HAVE PRESENTED FOR THIS JURY TO HEAR. I  
04:18PM 13 DON'T BELIEVE IT IS NECESSARY. I DON'T BELIEVE THE EVIDENCE  
04:18PM 14 SUPPORTS IT BY DOING -- AS A RESULT OF A LOUD HAWK BALANCING  
04:18PM 15 ANALYSIS.

04:18PM 16 SO I'M GOING TO RESPECTFULLY DECLINE YOUR INVITATION TO  
04:18PM 17 GIVE AN ADVERSE INFERENCE INSTRUCTION. I DO NOT BELIEVE THE  
04:18PM 18 EVIDENCE IN THIS CASE SUPPORTS SUCH AN INSTRUCTION.

04:18PM 19 NOW, HAVING SAID THAT, I'M NOT PRECLUDING YOU IN ANY WAY,  
04:18PM 20 OR MR. COOPERSMITH -- IT SOUNDS LIKE MR. COOPERSMITH IS GOING  
04:18PM 21 TO BE YOUR SPOKESPERSON FOR CLOSING.

04:18PM 22 MR. BRECHER: I SUSPECT SO.

04:18PM 23 THE COURT: AND THIS DOES NOT IN ANY WAY, OF COURSE,  
04:18PM 24 PRECLUDE HIM FROM SHOUTING TO THE HEAVENS THE FAILURE OF PROOF  
04:19PM 25 IN THIS CASE, PARTICULARLY IN REGARDS TO THIS LIS EVIDENCE AND

04:19PM 1 THE CONVERSATION ABOUT THE NUMBER OF PATIENTS THAT YOU COUNT ON  
04:19PM 2 ONE HAND VIS-A-VIS THE DOCUMENTS THAT WERE RECEIVED BOTH TODAY  
04:19PM 3 AND OTHER DOCUMENTS THAT WERE RECEIVED, AND EVIDENCE THAT WAS  
04:19PM 4 RECEIVED IN THE CASE THAT SUPPORT, THAT SUPPORT FROM THE  
04:19PM 5 DEFENSE PERSPECTIVE, AND THE EVIDENCE CAN BE ARGUED THAT  
04:19PM 6 SUPPORT THAT ACTUALLY THE TEST RESULTS WERE QUITE THE CONTRARY  
04:19PM 7 AND JUST THE OPPOSITE OF WHAT THE GOVERNMENT PRESENTS TO THE  
04:19PM 8 JURY AND THE JURY SHOULD SO FIND AND SHOULD ACQUIT YOUR CLIENT  
04:19PM 9 ON THOSE COUNTS.

04:19PM 10 THAT ARGUMENT I'M NOT IN ANY WAY -- BY THE COURT'S  
04:19PM 11 RESPECTFULLY DECLINING TO GIVE THIS INVITATION, I'M NOT  
04:19PM 12 PRECLUDING THAT ARGUMENT AT ALL, AND THE ARGUMENT CAN BE MADE,  
04:19PM 13 AND I DON'T THINK THE GOVERNMENT PARTS COMPANY WITH THAT.

04:19PM 14 THEY'LL TAKE THEIR BRUISES AND HITS AS THEY COME.

04:20PM 15 MR. BRECHER: THANK YOU, YOUR HONOR. WE STAND ON  
04:20PM 16 OUR ARGUMENTS AND WE STAND ON OUR POSITION, BUT WE UNDERSTAND  
04:20PM 17 THE COURT'S DECISION.

04:20PM 18 THE COURT: THANK YOU ALL. THANK YOU VERY MUCH.

04:20PM 19 LET ME ALL -- LET ME MOVE TO -- CAN THE GOVERNMENT ANSWER  
04:20PM 20 THE QUESTION ABOUT REBUTTAL NOW?

04:20PM 21 MR. LEACH: CAN I HAVE ONE MOMENT NOW, YOUR HONOR?

04:20PM 22 THE COURT: YES. OF COURSE.

04:20PM 23 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

04:20PM 24 MR. LEACH: THE ANSWER IS YES, YOUR HONOR.

04:20PM 25 THE GOVERNMENT DOES NOT INTEND TO PUT ON A REBUTTAL CASE.

04:20PM 1 THE COURT: ALL RIGHT. THE JURY THEN HAS ALL OF THE  
04:20PM 2 EVIDENCE THAT THEY NEED THEN TO DECIDE THIS CASE.

04:20PM 3 MR. LEACH: YES.

04:20PM 4 THE COURT: ALL RIGHT.

04:20PM 5 THE NEXT THING WE SHOULD DO IS FINISH UP OUR COLLOQUY  
04:20PM 6 ABOUT JURY INSTRUCTIONS.

04:20PM 7 MR. COOPERSMITH: YES, YOUR HONOR.

04:20PM 8 I JUST WANT TO MENTION ONE THING, AND EARLIER I MAY HAVE  
04:20PM 9 JUMPED THE GUN A LITTLE BIT JUST OUT OF AN ABUNDANCE OF  
04:20PM 10 CAUTION. I MENTIONED THE RULE 29 PLACE HOLDER AND THE COURT  
04:20PM 11 ACKNOWLEDGED THAT.

04:20PM 12 I THINK I'M ACTUALLY SUPPOSED TO DO THAT WHEN ALL OF THE  
04:20PM 13 EVIDENCE HAD CLOSED, AND TECHNICALLY THE GOVERNMENT HAD NOT  
04:21PM 14 DECIDED, AND SO I JUST WANT TO MAKE SURE THAT'S CLEAR.

04:21PM 15 WE DO RENEW OUR RULE 29. WE UNDERSTAND THE COURT WILL  
04:21PM 16 RESERVE, BUT NOW THERE'S NOT GOING TO BE ANY MORE EVIDENCE.

04:21PM 17 THE COURT: THANK YOU. THANK YOU. THAT IS THE  
04:21PM 18 APPROPRIATE PROTOCOL, AND YOU HAVE PRESERVED IT MULTIPLE TIMES  
04:21PM 19 AND WE'LL RECOGNIZE YOUR TIMELINESS IN THAT.

04:21PM 20 SO LET ME JUST ASK A PROCEDURAL QUESTION. TOMORROW IS  
04:21PM 21 FRIDAY. WE HAVE TO FINISH OUR INSTRUCTIONS. I WANT TO FINISH  
04:21PM 22 THOSE.

04:21PM 23 WE ARE NOT GOING TO ENGAGE IN THE BEGINNING OF ANY CLOSING  
04:21PM 24 ARGUMENTS TOMORROW. THAT'S MY THOUGHT. I DON'T WANT TO BREAK  
04:21PM 25 UP YOUR ARGUMENTS BY THE WEEKEND. I DON'T THINK THAT'S

04:21PM 1 APPROPRIATE.

04:21PM 2 MY SENSE IS THAT YOU -- BOTH SIDES WOULD WELCOME THE  
04:21PM 3 WEEKEND TO PREPARE ARGUMENTS IN ANY EVENT.

04:21PM 4 MR. COOPERSMITH: YES, YOUR HONOR.

04:21PM 5 THE COURT: OUR NEXT TIME TOGETHER, I BELIEVE, IS  
04:21PM 6 TUESDAY.

04:21PM 7 IS THAT RIGHT, MS. ROBINSON?

04:21PM 8 THE CLERK: YES, THAT'S CORRECT, YOUR HONOR.

04:21PM 9 THE COURT: AND SO WHAT I THOUGHT I WOULD ASK  
04:22PM 10 MS. ROBINSON TO DO IS TO SO INFORM THE JURY THAT THEY SHOULD  
04:22PM 11 COME BACK TUESDAY AT 9:00 O'CLOCK.

04:22PM 12 WHEN THEY COME BACK, I'LL ASK THE GOVERNMENT ON THE RECORD  
04:22PM 13 IF YOU HAVE ANY REBUTTAL EVIDENCE, YOU'LL TELL ME NO IN FRONT  
04:22PM 14 OF THE JURY, AND THEN WE CAN -- I WILL TELL THEM THEN THAT IT'S  
04:22PM 15 THE TIME FOR CLOSING ARGUMENTS, AND THE GOVERNMENT WILL BEGIN  
04:22PM 16 THEIR CLOSING ARGUMENT, AND THEN, MR. COOPERSMITH, YOU WILL,  
04:22PM 17 FOLLOW.

04:22PM 18 MR. COOPERSMITH: YES, YOUR HONOR.

04:22PM 19 FOR THE COURT'S INFORMATION AND FOR SCHEDULING, AND FOR  
04:22PM 20 THE GOVERNMENT'S AS WELL, SO AS I UNDERSTAND IT, THE CLOSING  
04:22PM 21 ARGUMENTS WILL BEGIN ON TUESDAY. THE GOVERNMENT WILL MAKE  
04:22PM 22 THEIR ARGUMENT.

04:22PM 23 I THINK THE ESTIMATE WE GOT -- AND OBVIOUSLY I'M NOT  
04:22PM 24 HOLDING THEM TO THIS AND WOULD NOT -- BUT IT WAS SOMETHING LIKE  
04:22PM 25 THREE AND A HALF TO FOUR HOURS. BUT WHATEVER IT IS, IT SOUNDS

04:22PM 1 LIKE I WOULD BEGIN THE ARGUMENTS IN THE AFTERNOON ON TUESDAY.

04:22PM 2 THE COURT: IT COULD BE.

04:22PM 3 MR. COOPERSMITH: AND THAT'S FINE, YOUR HONOR.

04:22PM 4 MY ARGUMENTS, I DO EXPECT, WILL EXTEND TO WEDNESDAY.

04:23PM 5 THE COURT: SURE.

04:23PM 6 MR. COOPERSMITH: I JUST HAVE TO GIVE THE COURT THE  
04:23PM 7 INFORMATION. IT IS GOING TO BE LENGTHY, YOU KNOW, JUST BECAUSE  
04:23PM 8 THERE'S SO MUCH EVIDENCE IN THIS CASE THAT I HAVE TO ADDRESS,  
04:23PM 9 AND I JUST WANT TO GIVE THE COURT THAT INFORMATION UP-FRONT.

04:23PM 10 THE COURT: YOU KNOW, YOU TAKE WHATEVER TIME YOU  
04:23PM 11 NEED, WHATEVER TIME YOU THINK IS APPROPRIATE.

04:23PM 12 OF COURSE THE COURT CANNOT -- I WOULD NEVER GIVE TIME  
04:23PM 13 LIMITS ON CLOSING ARGUMENTS IN A CRIMINAL CASE. SO WHATEVER  
04:23PM 14 YOU FEEL IS APPROPRIATE IS APPROPRIATE.

04:23PM 15 IF YOU NEED TO TAKE BREAKS -- AND, MR. COOPERSMITH, WHILE  
04:23PM 16 YOU PLAN OVER THE WEEKEND, WHILE YOU PLAN YOUR ARGUMENT, IF YOU  
04:23PM 17 FEEL IT APPROPRIATE TO TAKE SOME BREAKS DURING YOUR ARGUMENT  
04:23PM 18 AND YOU WOULD LIKE TO PUT IN PAUSES DURING YOUR ARGUMENT, JUST  
04:23PM 19 LET ME KNOW AND WE'LL DO THAT.

04:23PM 20 MR. COOPERSMITH: YES, YOUR HONOR. YOU KNOW, I  
04:23PM 21 THINK THAT'S A GREAT SUGGESTION, AND I WILL LOOK FOR NATURAL  
04:23PM 22 STOPPING POINTS AND THEN I'LL LET THE COURT KNOW ABOUT THAT.  
04:23PM 23 BUT, YEAH, THANK YOU.

04:23PM 24 THE COURT: SURE. WE CAN DO THAT.

04:23PM 25 MR. SCHENK: YOUR HONOR, MY RECOLLECTION IS THAT

04:23PM 1 THIS JURY HAS NOT BEEN ASKED ABOUT COMING TO COURT NEXT  
04:23PM 2 THURSDAY, AND I WONDER IF WHAT MR. COOPERSMITH IS SUGGESTING IS  
04:24PM 3 THAT HE MIGHT TAKE THE FULL DAY ON WEDNESDAY, AND WOULD THAT  
04:24PM 4 REQUIRE THE GOVERNMENT'S REBUTTAL TO BE FRIDAY, OR AM I  
04:24PM 5 MISREADING THIS AND THE REBUTTAL COULD ALSO OCCUR ON WEDNESDAY?  
04:24PM 6 MR. COOPERSMITH: YOU KNOW, IT REALLY DEPENDS ON HOW  
04:24PM 7 MUCH TIME I HAVE ON TUESDAY, YOUR HONOR.  
04:24PM 8 BUT, YOU KNOW, I THINK IT'S POSSIBLE THAT I WOULD NEED THE  
04:24PM 9 WHOLE DAY ON WEDNESDAY. I'M HOPING NOT.  
04:24PM 10 OBVIOUSLY I WANT TO MAKE SURE THAT THE GOVERNMENT HAS  
04:24PM 11 ENOUGH TIME FOR THEIR REBUTTAL AND ISN'T SQUEEZED THERE EITHER.  
04:24PM 12 AND I THINK WE HAVE UNTIL 4:00 ON WEDNESDAY.  
04:24PM 13 IS THAT CORRECT?  
04:24PM 14 THE COURT: YES. WELL, LET'S DO THIS: I'LL HAVE --  
04:24PM 15 WHEN MS. ROBINSON REACHES OUT TO THE JURY ABOUT TOMORROW, WE'LL  
04:24PM 16 INQUIRE OF THE JURY ABOUT THURSDAY.  
04:24PM 17 AND FRIDAY, IS FRIDAY A SCHEDULED DAY ALREADY?  
04:24PM 18 THE CLERK: YES, IT IS, YOUR HONOR.  
04:24PM 19 THE COURT: RIGHT. WE HAVE THAT SCHEDULED. BUT IF  
04:25PM 20 WE CAN CAPTURE THURSDAY IF NEEDED, MY RECOLLECTION IS THAT IT  
04:25PM 21 MIGHT BE A HALF A DAY. I JUST DON'T REMEMBER. ONE JUROR HAD A  
04:25PM 22 CONFLICT.  
04:25PM 23 THE CLERK: I DON'T RECALL. WE POLLED THEM.  
04:25PM 24 THE COURT: WE'RE NOT GOING TO DO ANYTHING ELSE  
04:25PM 25 TODAY. WE'LL COME BACK TOMORROW MORNING AT 10:00 O'CLOCK AND

04:25PM 1 FINISH OUR JURY INSTRUCTIONS. I THINK ALL OF US WOULD BENEFIT.

04:25PM 2 MR. COOPERSMITH: WE'LL PROCEED TOMORROW AT 10:00?

04:25PM 3 THE COURT: YES, TOMORROW AT 10:00 O'CLOCK TO FINISH

04:25PM 4 OUR JURY INSTRUCTIONS.

04:25PM 5 I DID GET THE DRAFT AND I WANT TO LOOK AT THE DRAFT THAT

04:25PM 6 WAS PROVIDED. I WOULD LIKE YOU TO -- IN LIGHT OF THE COURT'S

04:25PM 7 RULING, THAT IS GOING TO CHANGE THINGS ALSO, AND WE'RE AT THE

04:25PM 8 BOTTOM OF THE HOUR HERE, AND I'D LIKE TO HAVE US START FRESH

04:25PM 9 TOMORROW MORNING.

04:25PM 10 DOES 10:00 O'CLOCK WORK FOR EVERYONE?

04:25PM 11 MR. COOPERSMITH: YES, YOUR HONOR.

04:25PM 12 MR. SCHENK: YES, YOUR HONOR.

04:25PM 13 THE COURT: OKAY. LET'S DO THAT. LET'S GET

04:25PM 14 TOGETHER TOMORROW AT 10:00 O'CLOCK.

04:25PM 15 WE'LL HAVE MS. ROBINSON CONTACT THE JURY ABOUT THAT.

04:26PM 16 THE CLERK: YES.

04:26PM 17 THE COURT: OKAY. THANK YOU.

04:26PM 18 CAN I JUST SEE THE TWO OF YOU AT SIDE-BAR HERE FOR JUST A

04:26PM 19 MOMENT?

04:26PM 20 MR. COOPERSMITH: YES.

04:26PM 21 (SIDE-BAR CONVERSATION OFF THE RECORD.)

04:28PM 22 THE CLERK: COURT IS ADJOURNED.

23 (COURT ADJOURNED AT 4:28 P.M.)

24

25

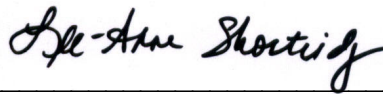
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE  
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO  
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS  
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: JUNE 9, 2022